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Missing persons

Report of the Secretary-General

Summary

In its resolution 69/184 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its seventy-first session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report is submitted pursuant to that request.

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I. Introduction

1. In its resolution 69/184 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report was prepared in accordance with that resolution. The report follows the same structure as the previous report of the Secretary-General on missing persons (A/69/293) and covers the period between 1 July 2014 and 30 June 2016. To prepare the report, input was sought from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.[1] The report draws also on a diverse range of public sources.

2. In resolution 69/184, the General Assembly focuses primarily on the specific issue of missing persons in connection with international or non-international armed conflicts. However, persons go missing in many other circumstances, including situations of violence, insecurity, organized crime, disaster and migration. Enforced disappearance, which is a human rights violation and crime under international law, also results in missing persons. Initiatives taken by Member States and intergovernmental and other organizations to address the issue of persons who are unaccounted for are not necessarily defined by the cause or context in which the persons go missing. As in previous reports of the Secretary-General, the present report therefore also reflects information received regarding the implementation of measures to address the issue of persons who are unaccounted for in contexts other than armed conflict, to the extent that they can be relevant for missing persons in connection with armed conflict.

II. International legal and institutional framework

3. In his previous reports on missing persons, the Secretary-General set out the international legal framework applicable to the issue of missing persons, drawing on international human rights law and international humanitarian law (see A/67/267, paras. 4-7, and A/69/293, paras. 4-6). Those reports also set out the way in which the right to the truth underpins the obligations of States to determine the fate and whereabouts of persons who are unaccounted for. In a new fact sheet of the International Committee of the Red Cross (ICRC), "Missing persons and their families",[2] published in 2015, the obligations of States to prevent people from going missing, to search for missing persons and to deal with the consequences of such events are clearly delineated.

4. The legal framework includes the International Convention for the Protection of All Persons from Enforced Disappearance. As at 1 July 2016, there were 52 States parties to the Convention. Since the previous report of the Secretary-General,

[1] Contributions were received from Algeria, Argentina, Azerbaijan, Bahrain, Colombia, Cyprus, El Salvador, Georgia, Greece, Guatemala, Kuwait, Montenegro, Niger, Panama, Senegal, Serbia, Spain, Switzerland and Ukraine, and from the Offices of the Ombudspersons of Ecuador and Moldova, the Ariel Foundation International, the International Centre for Justice and Human Rights, the International Committee of the Red Cross and the International Commission on Missing Persons.

[2] Available from https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet.

10 States (Belize, Greece, Italy, Malta, Mongolia, Niger, Slovakia, Sri Lanka, Togo and Ukraine) have acceded to or ratified the Convention. In the submissions received following the call for contributions to the present report, several States (El Salvador, Senegal and Switzerland) provided an update on their efforts to become parties to the Convention.[3]

5. The legal framework for issues pertaining to missing persons also includes regional agreements, instruments and texts. For example, in a thematic report of March 2016, the Commissioner for Human Rights of the Council of Europe provided an overview of the situation regarding missing persons and victims of enforced disappearances in Europe, including an overview of applicable European standards and mechanisms.[4]

6. In December 2014, Belgium, Luxembourg, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland signed the Agreement on the Status and Functions of the International Commission on Missing Persons, to establish the Commission as an international organization, with its headquarters in The Hague. The Agreement was subsequently also signed by Chile, Cyprus, El Salvador and Serbia. The purpose and functions of the Commission are set out in article 2 of the Agreement as to secure the cooperation of Governments and other authorities in locating persons missing as a result of armed conflicts, human rights abuses, natural and man-made disasters and other involuntary reasons and to assist them in doing so.

7. On 27 January 2016, the Security Council held an Arria-formula open debate on the global challenge of accounting for missing persons, including presentations by the United Nations High Commissioner for Human Rights, the International Commission on Missing Persons, the International Center for Transitional Justice, the Mayor of Lampedusa, Italy, and the Executive Director of a Mexican non-governmental organization, Ciudadanos en Apoyo a los Derechos Humanos. At the debate and in its contribution to the present report the Commission proposed the establishment of an inter-agency committee on missing persons to coordinate efforts with international organizations, civil society and scientific organizations, as well as Governments, to address the broad range of circumstances in which persons go missing.

III. Measures to prevent persons from going missing

8. In resolution 69/184, the General Assembly stresses the importance of measures to prevent persons from going missing in connection with armed conflict. Preventive measures should ideally be adopted in peacetime to ensure that they are in place before they may be required (see A/67/267, para. 8).

A. Enacting national legislation

9. It is critical that, in dealing with the issue of missing persons, States develop a national legal framework that incorporates their obligations under international

[3] The Ombudsperson of Moldova reported also that a feasibility study for the ratification of the Convention had been prepared in the country.

[4] Available from https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2016)1&Language=lanEnglish&direct=true.

humanitarian law and international human rights law. This is important from both a preventive and a reactive perspective, as it can help to ascertain the fate of missing persons, ensure the comprehensive collection, protection and proper management of information and realize the right to the truth of victims' families and provide them with the necessary support. National legislation should provide appropriate regulatory frameworks for data collection and protection. Personal data should be collected and processed lawfully and in compliance with international human rights law, including the right to privacy.

10. In its fact sheet entitled "Guiding principles/Model Law on the missing",[5] ICRC proposes and explains model legislative provisions to be used by States as guidance in the drafting of legislation for the protection of missing persons and the prevention of such situations. In its submission for the present report, ICRC also reported that it has continued to work with a number of States on draft legislation on issues relating to missing persons, including in Guatemala, Lebanon, Nepal, Peru and Ukraine. In Guatemala, for example, Bill 3590 is intended to provide families of victims of the armed conflict with solutions regarding the legal status of missing relatives. In Ukraine, a draft law on the prevention of disappearance and facilitation in tracing the missing was prepared under the auspices of the Ministry of Justice.[6] In Nepal, ICRC published a report entitled "Civil legal issues related to the families of the missing in Nepal", in which the legal and administrative issues faced by families of the missing are highlighted and a set of recommendations proposed.

11. In other countries, ICRC continued to conduct and support studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. In addition to those countries listed in previous reports (see A/67/267, para. 11, and A/69/293, para. 9), such a study is now also being carried out in Brazil. In its submission, Georgia reported that its 2014-2015 international humanitarian law national action plan included an analysis of its legislative framework regarding the issue of missing persons, to be carried out with ICRC. Furthermore, following the thirty-second International Conference of the Red Cross and Red Crescent, held in Geneva in December 2015, five States (Austria, Belgium, Costa Rica, Guatemala and Peru) have officially pledged to take measures to guarantee and protect the rights of missing persons and their families.

12. In several submissions received for the preparation of the present report, information was provided regarding the adoption of legislation to deal with issues pertaining to missing persons and their families. Colombia, for example, reported that, in 2015, the Government issued decree 303 regarding measures to contribute to the localization, identification, exhumation and commemoration of victims of enforced disappearance. The decree creates a databank of genetic profiles of the disappeared. It also encompasses specific measures to provide economic and psychological support to the relatives of disappeared persons during the process of return of the remains. In December 2015, the Government of Mexico submitted to the Senate a draft general law for the prevention and sanctioning of crimes related

[5] Available from https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law.

[6] See also OHCHR, report on the human rights situation in Ukraine, 16 February to 15 May 2016, available from www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf, para. 28. It is noted that, while the draft law marks an important step toward streamlining national procedures and the implementation of international law, it requires further development, such as the establishment of a centralized entity or institution dealing with missing persons.

to disappearance. In Peru, in May 2016, Congress approved a draft law on the tracing of disappeared persons, which covers the period of armed conflict from 1980 to 2000. It confers on the Ministry of Justice and Human Rights and on the Office of the Prosecutor a central and leading role in the tracing of disappeared persons, and establishes a national register of disappeared persons.[7] In June 2016, the Government of Sri Lanka approved a cabinet paper, following which draft legislation has been tabled in Parliament to grant a certificate of absence to the relatives of missing persons.

B. Other preventive measures

13. In time of armed conflict, the production and proper use of means of identification by the armed and security forces play an important role in preventing persons from going missing. States have the primary responsibility for the production and compulsory use by their armed forces of such items as identification tags. International humanitarian law also requires the establishment of national information bureaux and grave registration services. National information bureaux can be found in Armenia, Azerbaijan, Iran (Islamic Republic of), Iraq and the United Kingdom, for example.

14. Ensuring appropriate training of and oversight over security and law enforcement officials is another example of a preventive measure, as it can prevent misconduct leading to persons going missing and ensure adequate responses when such situations occur. In its contribution to the present report, Bahrain highlighted the adoption of a general strategy to develop its security apparatus, in an effort to ensure greater respect for human rights.

IV. Measures to clarify the fate and whereabouts of missing persons

15. In resolution 69/184, the General Assembly reaffirms the right of families to know the fate of their relatives reported missing in connection with armed conflicts, and calls upon all States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing. The fate and whereabouts of missing persons should be determined on the basis of transparency, accountability and public involvement.

A. Tracing and restoration of family links

16. ICRC reported that it continued its extensive tracing activities, including the collection of information about persons unaccounted for and the circumstances under which they had gone missing. Updated lists of missing persons that have been reported to ICRC in a given context can be shared in the framework of a confidential dialogue with the parties concerned, or published and widely distributed among authorities and the public at large for the use of all stakeholders, in line with instructions from and with the consent of the sources of information. The work also involves maintaining a dialogue and making representations to the

[7] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20046&LangID=E.

relevant authorities or armed groups to determine the whereabouts of missing persons, provided that the families of the missing persons have made a request to that effect or have agreed to such intervention.

17. ICRC and national Red Cross and Red Crescent societies assist with the maintenance and restoration of links between family members during conflict and other emergencies, which involves tracing relatives, exchanging family messages, reuniting separated families and seeking to clarify the fate of those who remain missing. ICRC has expanded the scope of its work in relation to the restoration of family links to persons separated as a consequence of migration, in recognition of their particular vulnerability in that respect. Other organizations also continue to be involved in the tracing and restoration of family links, including the Office of the United Nations High Commissioner for Refugees (OHCHR) and the International Organization for Migration. The United Nations Children's Fund continues to work to assist unaccompanied children, for example through the introduction of RapidFTR, a mobile phone application and data storage system for expediting the process of family tracing and reunification during and after crises.

B. Coordination mechanisms

18. Parties to a former conflict may agree to take specific measures under the auspices of a neutral actor. One example is setting up coordination mechanisms to exchange information; provide mutual assistance in locating and identifying missing persons and in the recovery, identification and return of human remains; and keep family members informed about progress in determining the fate and whereabouts of missing persons.

19. In Cyprus, the Committee on Missing Persons, which is composed of a Greek Cypriot member, a Turkish Cypriot member and a member from the United Nations, continued its forensic recovery and identification activities, with forensic advice from ICRC and technical assistance from the Argentine Forensic Anthropology Team, a non-governmental organization. As at 31 May 2016, the Committee had excavated 1,060 sites located across the island and exhumed the remains of 1,111 missing persons. Of those exhumed, 641 have been identified and returned to their families. The number of Greek Cypriots still missing is estimated at 1,016 and the number of Turkish Cypriots still missing at 344.[8] The Secretary-General has previously underscored that, in the light of the advanced age of both relatives and witnesses, it is critical that the Committee be given the means and the information required to accelerate its work.[9] Cyprus expressed similar concerns in its contribution to the present report.

20. Efforts to locate and identify missing persons in Kosovo[10] have been carried out primarily by the United Nations Interim Administration Mission in Kosovo and, since 2009, the European Union Rule of Law Mission in Kosovo, in cooperation with ICRC and the International Commission on Missing Persons. The Working

[8] See also www.cmp-cyprus.org/facts-and-figures/.

[9] See the report of the Secretary-General on the United Nations Operation in Cyprus (S/2016/11), para. 39. See also OHCHR report on the question of human rights in Cyprus (A/HRC/31/21), paras. 12-19.

[10] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

Group on Missing Persons, chaired by ICRC and bringing together representatives of the authorities in Belgrade and Pristina, continued its work to account for missing persons. According to information received from ICRC, of the 4,381 cases that were closed as at April 2016, in 1,373 the persons were located alive. It was estimated that the number of persons still unaccounted for stood at 1,665.[11] The total number of missing persons related to the 1998-1999 events is estimated at 6,046.

21. In Croatia, bilateral exchange of information pertaining to missing persons between Croatia and Serbia was ongoing through a working group mechanism in which ICRC and the International Commission on Missing Persons participate as observers. In its contribution to the present report, Serbia reported that arrangements had been made for concrete mechanisms in view of future exchange of data and information aimed at the further harmonization of lists of missing persons. Arrangements were also made for joint field reconnaissance, exhumations and identifications. In addition, Serbia reported that it had supported regional meetings organized by the Commission to prepare a joint list of missing persons in the region and to promote bilateral and multilateral cooperation.

22. The tripartite coordination mechanism set up by the authorities of Georgia and the Russian Federation and the de facto "authorities" in South Ossetia, Georgia, to exchange information and clarify the fate of persons unaccounted for during and after the hostilities of August 2008, met eight times between February 2010 and November 2013, resulting in the exhumation of 14 sets of human remains, of which six were identified and handed over to their families. After a two-year gap, the ninth meeting took place in February 2016, reviving the discussions on the clarification of the fate and whereabouts of a total of 183 persons still unaccounted for. In its submission for the present report, Georgia reported that it also continued to hold regular meetings regarding the issue of missing persons in the context of the Joint Incident Prevention and Response Mechanism, which is mediated by the Organization for Security and Cooperation in Europe and the European Union Monitoring Mission and involves the Georgian and Russian authorities as well as the de facto "authorities" in South Ossetia, Georgia.

23. A similar mechanism, in relation to the conflict in Abkhazia, Georgia, from 1992 to 1993, which was established at the end of 2010, met for the eighth time in December 2015, while its forensic working group met 11 times in total. The dialogue led to the exhumation of 64 sets of human remains in 2013 and an additional 98 sets in 2014 and 2015. To date, 81 bodies have been identified and handed over to the families. Search and recovery of human remains was planned for three additional sites for 2016.

24. The Independent Commission for the Location of Victims' Remains, established in 1999 by an intergovernmental agreement between the Republic of Ireland and the United Kingdom, has a mandate to obtain information which may lead to the location of the remains of those killed and buried in secret by illegal organizations prior to 10 April 1998, as a result of the conflict in Northern Ireland. As at June 2016, the remains have been recovered of 10 of the 16 persons who disappeared.[12]

[11] See the latest report of the Secretary-General on the United Nations Interim Administration in Kosovo (S/2016/407), para. 44. See also A/HRC/30/38/Add.1.

[12] See www.iclvr.ie/en/ICLVR/Pages/TheDisappeared.

25. In 2013, the Security Council adopted resolution 2107 on the situation between Iraq and Kuwait, requesting the Secretary-General to report to the Security Council on efforts regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains. The reports provide detailed accounts of progress regarding the determination of the fate and whereabouts of persons missing in Iraq and Kuwait (see, most recently, S/2016/87 and S/2016/372). The Tripartite Commission, chaired by ICRC, which was established in 1991 to resolve the fate of persons missing in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. The Commission continues to study different options that could help locate new gravesites. According to information received from ICRC, the Commission has to date resolved 316 cases of missing persons, and 149 sets of human remains have been repatriated from Kuwait to Iraq. In its contribution to the present report, Kuwait reported that efforts had led to 317 sets of remains being brought from Iraq to Kuwait and to the identification and determination of the fate of 232 persons. In 2014 and 2015, however, no remains were found.

26. Joint efforts were undertaken by the authorities of Iran (Islamic Republic of) and Iraq to determine the fate of persons still unaccounted for in relation to the 1980-1988 war between the two countries, with ICRC chairing the tripartite committee that was formed in 2013. In 2014 and 2015, a total of 1,053 sets of human remains were recovered from Iraqi sites and handed over to the Iranian authorities and a total of 55 sets of human remains were transferred from the Islamic Republic of Iran to the Iraqi authorities.[13]

C. National institutions

27. National institutions, such as national commissions on missing persons, can play a crucial role in clarifying the fate of missing persons and providing support to the families of the missing. National information bureaux and grave registration services, as provided for in international humanitarian law, also fulfil this role. In the following paragraphs some recent developments are highlighted regarding the establishment of national institutions, on the basis of information received during the preparation of the present report.

28. Many families still do not know what happened to relatives who went missing during the Nagorno-Karabakh conflict. In December 2015, ICRC provided the parties concerned with an updated list containing the names of 4,496 people registered as missing by its delegations in Baku and Yerevan and its mission in the affected area. In that endeavour, ICRC worked closely with the Azeri and Armenian commissions on prisoners of war, hostages and missing people and with the families of missing persons. In its contribution for the present report, Azerbaijan stated that its State Commission on Prisoners of War, Hostages and Missing Persons had registered 3,803 persons as missing as at 23 June 2016. It also reported that, in collaboration with ICRC, the State Commission was collecting ante mortem data on missing persons and compiling them in centralized databases in order to facilitate future identification of human remains.

[13] See ICRC annual reports for 2014 and 2015.

29. In Bosnia and Herzegovina, a Missing Persons Institute was established in 2005 to address all aspects related to the issue of missing persons resulting from the conflicts in the former Yugoslavia. Over 19,496 persons had been identified in the western Balkans by March 2016, of whom over 14,767 related to Bosnia and Herzegovina. By March 2016, Bosnia and Herzegovina had accounted for two thirds of those missing in connection with the armed conflict, while 6,922 persons were still unaccounted for. Concerns have been expressed, however, that the work to exhume and identify remains has slowed down in recent years, with less information being made available on possible gravesites and reduced cooperation between government and justice institutions.

30. In the region of the former Yugoslavia, several agreements to intensify cooperation were concluded. Serbia reported that the Governments of Bosnia and Herzegovina and Serbia signed a protocol in November 2014 on cooperation in the search for missing persons. Montenegro reported that, in 2012, a protocol on cooperation was signed between the national commissions of Montenegro and Serbia and that, in October 2015, an agreement on cooperation was signed between the national commissions of Montenegro and Kosovo. In August 2014, the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses of the International Commission on Missing Persons was signed by the Presidents of Bosnia and Herzegovina, Croatia, Montenegro and Serbia.

31. In its contribution for the present report, Ukraine reported that it had formed an Inter-agency Centre for Assistance in the Release of Captives and Hostages and the Search for Missing Persons under the Ukrainian Security Service. Ukraine further reported that the Inter-agency Centre's register, as at 11 April 2016, listed 3,021 persons as found and released, 115 as still being held by armed groups and 681 as considered missing. Ukraine stated that criminal proceedings had been initiated in 4,162 cases of missing or abducted persons (931 military and 3,229 civilian) in the Donetsk and Luhansk regions since the beginning of the security operation and that the overall number of missing persons stood at 4,478 (1,026 military and 3,452 civilian). A total of 2,578 missing persons (508 military and 2,070 civilian) had been found and 1,887 were still missing. Finally, Ukraine reported that 827 bodies were pending identification.[14] Both Ukraine and ICRC reported that they had discussed the creation of an independent/impartial coordination mechanism on the issue of missing persons in connection with the conflict in eastern Ukraine. Such a mechanism would greatly enhance the opportunities for the families of missing persons to seek and obtain information about the whereabouts of their relatives.

32. In Colombia, three mechanisms have been created to coordinate efforts to provide answers to the families of missing persons regarding the fate and whereabouts of their relatives, and to provide reparation: the National Commission on the Tracing of Disappeared Persons (Comisión de Búsqueda de Personas Desaparecidas), which also coordinates the national register of disappeared persons, the National Unit for Victim Support and Full Reparation (Unidad para la Atención y Reparación Integral a las Víctimas) and the National Centre for Historical

[14] See also OHCHR, report on the human rights situation in Ukraine, 16 February to 15 May 2016, available from www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf, paras. 26-28, also referring to missing persons in eastern Ukraine.

Memory. Since 2007, the inter-institutional round table on support for victims of enforced disappearances, chaired by the National Unit and composed of a number of State agencies, victims, human rights and forensic organizations, has continued to provide a platform for exchange between institutions and families at national level. A number of Colombian regions have created similar platforms at regional level. Importantly, at the end of 2015, as part of the peace negotiations between the Government and the Revolutionary Armed Forces of Colombia — People's Army, the parties reached an agreement that provides for the creation of an independent search unit for persons missing in connection with the armed conflict. In its contribution to the present report, Colombia also referred to a number of preliminary humanitarian measures that are to be implemented before the signing of the final peace agreement and that are designed to build trust between the parties in the peace process. These include measures on the search for and the location, identification and dignified return of the remains of missing persons in the context and as a result of the armed conflict.

33. In its contribution to the present report, Panama recalled that, in 2011, it had created a National Commission to continue the investigations into enforced disappearances that occurred between 1968 and 1989.

34. In Lebanon, in the context of the possible establishment of a national commission on missing persons, ICRC has registered detailed information on about 2,200 missing persons and is planning to start collecting biological reference samples from the relatives of missing persons as soon as its project is formally approved.

35. In its contribution to the present report, Kuwait reported that it had created a National Committee for Missing Persons and Prisoners of War Affairs, which, inter alia, had established a register of prisoners of war and missing persons, prepared files for such cases and established a genetic database to facilitate identification.

36. In Sri Lanka, in May 2016, the Government published a draft bill to create a dedicated Office of Missing Persons. The proposed Office will be a permanent structure that is intended to uncover the fate and whereabouts of the missing and to provide victims with access to legal, administrative and psychosocial services. Some concerns have been expressed regarding the draft law, including a lack of transparency during the drafting process and limited public consultation with victims and civil society.[15]

D. Truth-seeking mechanisms and processes

37. Truth-seeking mechanisms and processes also constitute valuable means by which to address the issue of missing persons, including through the clarification of the circumstances in which persons went missing. The following are examples of the way in which recent truth-seeking mechanisms have dealt with the question of missing persons, notably in the context of enforced disappearances.

38. In December 2014, the National Truth Commission of Brazil released its final report, in which it describes human rights violations committed between 1964 and

[15] See also United Nations High Commissioner for Human Rights, oral update at the Human Rights Council on 28 June 2016 (A/HRC/32/CRP.4).

1985. Enforced disappearance and concealment of victims' bodies are listed among the worst violations. The third volume of the report is dedicated to 434 individual victims, of whom 243 have disappeared (the bodies of 33 having later been found). In its report, the Commission called on the judiciary to end impunity for those involved in serious, systematic abuses. It also recommended the creation of an administrative body to continue gathering information and investigating cases, and to monitor activities aimed at locating, identifying and returning the remains of the disappeared to their families or other persons entitled to receive them for proper burial.

39. In March 2016, the Commission of Investigation on Enforced Disappeared Persons of Nepal became operational, with a mandate to "find out and record the truth and bring it out for the general public" regarding the fate of more than 1,000 people who remain unaccounted for following the 1996-2006 conflict. However, the enabling law of the Commission has been criticized for not meeting national constitutional guarantees or complying with international law. Despite a Supreme Court order to amend the law, no legislative or administrative action has been taken to address the concerns, including those related to the Commission's powers to recommend amnesties for gross human rights violations.[16]

40. In its contribution to the present report, the Office of the Ombudsperson of Ecuador reported that, following the final report of the Ecuadorian Truth Commission (which had found 17 cases of enforced disappearance) in 2010, a law on reparation for victims and the prosecution of serious human rights violations had been adopted in 2013. The law also provided for the creation of a programme for administrative reparation under the responsibility of the Ombudsperson.[17]

41. International commissions of inquiry and other investigations have made recommendations to relevant authorities regarding missing persons and victims of enforced disappearance. For example, the final report of the OHCHR investigation on Sri Lanka includes a thematic chapter on the issue, in which it was recommended that missing persons cases be transferred to a credible and independent institution developed in consultation with families of the disappeared (see A/HRC/30/CRP.2, paras. 386-531). In its final report, the commission of inquiry on human rights in Eritrea concluded that there was reasonable ground to believe that crimes against humanity, including enforced disappearances, had been committed in the country. The Commission noted that enforced disappearances continued to occur, but also that many of those subjected to enforced disappearance in the past remained unaccounted for and that female and child relatives of the disappeared often faced various forms of discrimination (see A/HRC/32/47, para. 48).[18] The Commission made a strong call for accountability.

[16] The Nepal Supreme Court, in order (069-WS-0057) of 26 February 2015, held that any provisions of the Act that serve to compromise its judicial role are invalid, including the power to grant amnesties. For more information, see the OHCHR technical note of 16 February 2016, in which is explained also that, in the absence of steps by the Government to ensure that the enabling law and procedures of the Commission are in compliance with the international legal obligations of Nepal, the United Nations is unable to provide support to the institution (available from www.ohchr.org/Documents/Countries/NP/Nepal_UN%20osition_supportTRC_COIDP_Feb2016.pdf).

[17] See also the 2015 thematic report of the Ombudsperson on missing persons in Ecuador, available from http://repositorio.dpe.gob.ec/bitstream/39000/601/1/IT-003-DPE-2015.pdf.

[18] See also A/HRC/32/CPR.1, A/HRC/29/42 and A/HRC/29/CPR.1.

42. Following its 2014 thematic report on enforced disappearances (see A/HRC/25/65, annex IV), the Independent International Commission of Inquiry on the Syrian Arab Republic continued to draw attention to the issue of missing persons in the country. It recommended that confidence-building measures in the political process take into account the needs and concerns of communities, including the tracking of missing persons (see A/HRC/31/68). It also recommended that the international community provide, as a matter of urgency and to build confidence at local level, the creation of a mechanism to register cases of missing persons, investigate their whereabouts and identify human remains, including those found in mass graves (see A/HRC/31/CRP.1, para. 110 (c)). Specific attention to the issue of missing persons in the Syrian Arab Republic is needed, including by ensuring full access for humanitarian and human rights actors.

E. Archives

43. The collection, protection and management of relevant information are essential for addressing the issue of missing persons. Archives are crucial to the exercise of individual rights, such as the right to the truth about the circumstances in which violations took place and, in the event of death and disappearance, about the victims' fate.[19] In resolution 69/184, the General Assembly invites States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with applicable laws and regulations.

44. In 2015, OHCHR published a Rule of Law Tool for Post-Conflict States on Archives.[20] The publication is aimed at providing guidance to United Nations field missions, transitional administrations and civil society on the management, reform, use and preservation of archives to help guarantee and enforce human rights, particularly the right to the truth. It explores the links between archives and the right to the truth and focuses on the means to strengthen archives through the identification of good practices for the management of different types of records and archives.

45. In September 2014, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, in collaboration with ICRC and Swisspeace, convened a two-day workshop in Geneva on archives in the context of the right to know. In his report to the thirtieth session of the Human Rights Council, held in September 2015, the Special Rapporteur subsequently produced a set of general recommendations for truth commissions and archives, which are intended to contribute to the development of international standards (see A/HRC/30/42, annex).

46. Information collected in the investigation phases of international criminal tribunals can also be valuable for determining the fate and whereabouts of missing persons in specific cases. In that regard, ICRC reported that access to the archives of the International Criminal Tribunal for the Former Yugoslavia and other organizations working in Kosovo had resulted in 134 analytical reports since 2009,

[19] See the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principles 3 and 4.

[20] Available from www.ohchr.org/Documents/Publications/HR_PUB_14_4_Archives_en.pdf.

which had helped clarify the fate and whereabouts of over 100 missing persons. In 2015, ICRC initiated similar research with respect to missing persons in Bosnia and Herzegovina.

V. Missing children

47. In resolution 69/184, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families.

48. In its submission, the non-governmental organization the Ariel Foundation International emphasized that the prevention and resolution of cases of missing children requires a holistic approach that addresses various complex factors, including legal and societal. It also highlighted the importance of engaging children and affected families in the evaluation and formulation of responses and the need to address the lack of comprehensive and disaggregated data and research on missing children.

49. In El Salvador, the National Commission for Tracing Missing Children during the Internal Armed Conflict continued its work to clarify the fate of children whose whereabouts are still unknown. In its submission, El Salvador reported that, at the end of 2015, the Commission had registered a total of 275 cases of boys and girls who had disappeared during the armed conflict. The Commission had investigated 205 cases, reuniting 25 children with their relatives, with a further 9 children currently being processed. In 17 cases, investigation had confirmed the death of the child. In its submission, Argentina recalled that through the work of the "Abuelas de la Plaza de Mayo" and the National Commission for the Right to Identity (Comisión Nacional por el Derecho a la Identidad), 119 children who had disappeared in the context of the military dictatorship had been identified and reunited with their relatives.

VI. Criminal investigation and prosecution

50. Cases of missing persons may involve conduct that amounts to a criminal offence, and the perpetration of enforced disappearance is always a crime. Depending on the circumstances, such conduct may also amount to war crimes or crimes against humanity. States have an obligation, clearly established in international law, to investigate and prosecute such conduct. Moreover, criminal investigations and prosecutions can help victims to realize their right to the truth if the findings of such investigations and prosecutions are made available to interested parties.

51. In order to enable effective investigations and prosecutions, crimes under international law should be incorporated in national criminal law, and the necessary investigative and judicial mechanisms should be established. Several States (e.g. Greece, Senegal and Spain), in their contributions to the present report, highlighted that they had criminalized enforced disappearance in their domestic laws or were in the process of doing so. Niger noted that the lack of a specific crime of enforced disappearance in its national law had meant that some cases linked to the conflict with Boko Haram had to be prosecuted on charges of arbitrary arrest and detention instead.

52. It is important to ensure or strengthen the capacity of investigators and prosecutors' offices with respect to files pertaining to missing persons. El Salvador, in its contribution to the present report, stated that the Board of the Prosecutor Training School (*Escuela de Capacitación Fiscal*) had been instructed to incorporate and strengthen the curriculum components related to international humanitarian law and investigation techniques regarding enforced disappearances. In Mexico, the National Conference of Attorneys General adopted a protocol for the tracing of disappeared persons and the investigation of the crime of enforced disappearance in August 2015. It defines general principles and binding operating procedures for prosecutors, forensic experts and police responsible for investigating the crime of enforced disappearance. In December 2015, Mexico also created, under the Attorney General's office, an external tracing and investigation support mechanism, coordinated by its new Unit for investigations on crimes by and against migrants. The mechanism is in its early stages and protocols and guidelines have begun to be developed for its operation. In the Plurinational State of Bolivia, the Ministry of Justice, the Office of the Prosecutor and a university, Universidad Mayor de San Andrés, signed an agreement in October 2013 to investigate cases of enforced disappearances that took place between 1964 and 1982. The agreement will be in force until October 2016.

53. In its contribution for the present report, Algeria noted that it had amended its Criminal Procedure Code in 2015 to include a chapter on the protection of witnesses, experts and victims.

VII. Forensic recovery and identification of remains of missing persons

54. The recovery, identification and dignified management of bodies or human remains are essential. New methodologies and scientific advances are important in this regard. In resolution 69/184, the General Assembly invited States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to further their engagement in order to follow forensic best practices regarding the prevention and resolution of cases of missing persons.

55. In his previous report, the Secretary-General highlighted and emphasized the importance of ensuring that forensic investigations into missing persons are up to international standards, not only because of the need to ensure the credibility of forensic institutions and practitioners, but also to avoid traumatizing families further. Several of the international standards and recommendations were recalled in the report (see A/69/293, paras. 49-51). In a resolution of 2014 (AG/RES.2864, para. 8), the Organization of American States invited States to support the training of forensic scientists in their countries, together with the implementation of forensic examinations consistent with internationally validated scientific standards and procedures.

56. ICRC reported that a growing number of forensic institutions and practitioners follow the standards and recommendations on forensic best practices as they apply to the prevention and resolution of cases of missing persons. Several countries have acquired the highly specialized forensic services required for such investigations, including in the fields of forensic anthropology and forensic DNA analysis. In addition to the countries listed in the previous report (see A/69/293, para. 52), these

include Canada, Kuwait and South Africa. ICRC has also been providing assistance and helping to build local forensic capacity, in Ecuador, Israel and the Occupied Palestinian Territory, the Syrian Arab Republic and Ukraine, in addition to the places listed in the previous report (ibid., para. 52). Such assistance ranges from technical support and advice and tailored training to the provision of equipment and tools and the promotion of communication, coordination and cooperation among forensic services for the improved prevention and investigation of the missing from armed conflict (and catastrophes), as well as the standardization of forensic procedures applicable to the search for and recovery, identification and management of human remains.

57. In 2015, Argentina, with support from ICRC, launched a manual on international best practices in forensic genetics applied to human rights and humanitarian investigations, including in the resolution of missing persons cases. In its contribution to the present report, Argentina also referred to its agreement with the Argentine Forensic Anthropology Team with the aim of implementing the Latin American Initiative for the Identification of Missing Persons, which began in 2007. It is currently constituted of three non-governmental organizations that apply forensic science to the investigation of human rights violations committed in Latin America: the Guatemalan Forensic Anthropology Foundation, the Peruvian Forensic Anthropology Team and the Argentine team. The system has to date managed to collect 9,800 samples, and 370 victims have been identified.

58. In Peru, ICRC and the Office of the Prosecutor signed an agreement in April 2015 to design and implement a plan to improve the work of the Institute of Forensic Medicine related to the tracing of persons who went missing during the 1980s and 1990s and the support for their families. In Honduras, ICRC is facilitating a working group on missing migrants for the authorities and civil society organizations to standardize the ante mortem form used by all participants and define a clear division of responsibilities in the tracing of missing migrants and support for their families.

59. In its contribution to the present report, Senegal noted that it is home to the first African private centre for diagnosis and research in molecular medicine, the Centre de Diagnostic et de Recherche en Médecine Moléculaire, which also carries out DNA tests for the identification of missing persons.

VIII. Legal status of missing persons and support for families

60. The suffering endured by the families of missing persons is often exacerbated by the multiple difficulties that families face as a direct result. Victims and the families of the missing should be placed at the centre of all action concerning the issue of missing persons and they should be enabled to participate in the design of and response to their multifaceted needs. Their rights to the truth, justice and an effective remedy should inform such responses. In resolution 69/184, States were called upon to take appropriate steps with regard to the legal situation of missing persons and the needs and accompaniment of their family members, with particular attention to the needs of women and children.

A. Understanding the needs of families

61. In cooperation with family associations, national societies of the International Red Cross and Red Crescent Movement, non-governmental organizations and academic and research institutions, ICRC continued to assess the needs of families of missing persons, on the basis of its guidelines for multidisciplinary family needs assessments. By 2015, such assessments pertaining to Central America (El Salvador, Guatemala, Honduras and Mexico), Colombia, Iraq, Lebanon, Libya, Peru, Senegal, Sri Lanka, Tajikistan and Uganda had been concluded. In some of those locations, the assessment also relates to the needs of families of missing migrants.[21] The aim of the assessments is to ensure a contextualized and comprehensive understanding of the multifaceted needs of families, and determine the existing capacity to respond and the level of additional assistance needed. ICRC also engages in confidential dialogues with the authorities concerned regarding the needs identified and appropriate recommendations.

B. Addressing the needs of families

62. The families of missing persons have many needs, including the need to know what happened; the need for recognition and commemoration; the need for economic, financial, psychological and psychosocial support; the need for protection against security threats; and the need for access to justice and effective remedy. Furthermore, as a result of gaps in legislation and administrative obstacles, families often lack access to social benefits and pensions and are prevented from exercising their rights under property and family law. Diverse needs and the multidimensional impact of the disappearance require a holistic response.

63. In 2013, ICRC published "Accompanying the families of missing persons: A practical handbook",[22] setting out its approach to addressing the needs of families of the missing. The "accompaniment" approach aims to strengthen the abilities of individuals and families to deal with difficulties related to the disappearance of their relatives and to help them reacquire a healthy social life and emotional well-being. It attempts to address every aspect of the difficulties faced by families by involving professionals from different areas (e.g. forensic, legal, health, social work, economic security, mental health and psychological support) and community members. The response envisages interventions at all levels: families of missing persons and community, local and national authorities. The approach is needs-based and participatory, following the premise that the families of missing persons know their needs better than anyone else. ICRC has worked with this approach in several contexts, including in Colombia, Mexico and Central America, Peru and Uganda. Internal evaluations of programmes in Armenia, Georgia, Nagorno-Karabakh, Nepal and Uganda have confirmed that a holistic response to the various needs of family members was a key aspect in achieving a positive impact.

[21] In its contribution for the present report, Guatemala drew attention to the plight of families of missing migrants, also referring to the Caravan of Mothers of Missing Migrants (Caravana de Madres de Migrantes Desaparecidos), held in November 2014 in Guatemala to express concern about the rates of disappearances of migrants in Central America and Mexico.

[22] Available from https://shop.icrc.org/accompagner-les-familles-des-personnes-portees-disparues-2314.html.

C. Legal situation of missing persons

64. National law should clarify the legal situation of missing persons, including through provisions for the person to be declared absent or missing so that the families of missing persons become eligible for social and financial benefits, without forcing them to declare the missing relative dead.

65. Several States have, either by amending existing national legislation or through specific provisional decrees, granted victims, including the families of missing persons, specific social and financial benefits. These include pensions for the families of missing soldiers, reduced health care and tuition fees, child allowances, food assistance, loans and interim relief. In its contribution, Kuwait explained that its National Committee for Missing Persons and Prisoners of War Affairs had also established a social services office to provide social and psychological services to the families of the missing, including, inter alia, monthly allowances, priority government housing and debt waivers.

IX. Conclusions and recommendations

66. **While, in its resolution 69/184, the General Assembly focuses primarily on the issue of missing persons in connection with armed conflict, I urge Member States also to consider the issue of missing persons in other contexts, including situations of violence, insecurity, organized crime, disaster and migration.**

67. **I commend Member States for their efforts in addressing the issue of missing persons as a consequence of armed conflict. However, I remain alarmed at the reported numbers of missing persons and the tremendous suffering that each instance in which a person goes missing causes to the direct victim and his or her family.**

68. **All Member States are urged to keep this multifaceted issue high on the agenda and to redouble their efforts to address it, in their own countries, in their regions and at the global level, in a spirit of cooperation. Responses need to be depoliticized, strongly focused on both prevention and accountability, and have the rights, needs and concerns of the missing and members of their families — notably their right to the truth — at the centre.**

69. **States are encouraged to take steps to assess and understand the many needs of missing persons and their families, including from a human rights perspective. Such assessment should drive the formulation of appropriate responses, with special consideration for the specific vulnerabilities faced by women, children, migrants, refugees, internally displaced persons and other groups. The approach to addressing the issue of missing persons must be not only needs-based but also participatory and multidisciplinary.**

70. **It remains of critical importance that States put in place the appropriate legislative and institutional framework to effectively deal with the issue of missing persons. Such a framework should specifically address the legal and practical difficulties that missing persons and their families experience.**

71. **I strongly encourage all States that have not yet become parties to the International Convention for the Protection of All Persons from Enforced Disappearance to take the necessary measures to do so, to incorporate its provisions into national law and to ensure full implementation of those**

provisions by the relevant authorities. I also call on all Member States to lend their full cooperation to the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances.

72. In the aftermath of armed conflict, States should actively engage in processes to address cases of missing persons and minimize their consequences, including by establishing adequate processes to locate, identify and repatriate the missing to their families. In that regard, all former parties to conflicts currently engaged in such efforts are called upon to step up their efforts and cooperation as time may affect the availability of information.

73. The issue of missing persons must also be considered in the context of peacebuilding and transitional justice processes. Humanitarian efforts to locate, identify and return missing persons, as well as accountability and transitional justice processes, should be mutually reinforcing. Linkages between such efforts should be considered, with full respect for the principles of confidentiality, protection and informed consent.

74. The issue of missing children in connection with armed conflict continues to require greater attention, including through focused research and improved collection of comprehensive and disaggregated data.

75. States are encouraged to continue to develop local forensic capacity, in line with applicable forensic best practices and international standards. Building well-trained, well-resourced and independent forensic capacities is essential for ensuring credible investigations into cases of missing persons and the identification of human remains. Regional coordination and cooperation among forensic institutions and practitioners should be promoted and supported.

76. Considering the importance of the collection, protection and management of information for addressing the issue of missing persons and the realization of victims' right to the truth, States are encouraged to ensure the preservation of and access to archives. Such access should be as wide as possible, but consistent with considerations of privacy and protection.

77. Greater efforts are needed to ensure accountability for gross human rights violations or serious violations of international humanitarian law which have led to persons going missing. Both as a preventive measure and as a measure of redress for victims, the importance of ensuring accountability and effective remedy, including reparations, cannot be overestimated. Where national mechanisms are insufficient or inadequate, Member States should ensure that appropriate international fact-finding and accountability mechanisms are created and called upon to intervene. These mechanisms should be provided with adequate resources, and their recommendations should be followed up promptly and effectively.

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Item 112 of the provisional agenda*
Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations

Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations

Note by the Secretary-General**

1. In accordance with the provisions of Article 12, paragraph 2, of the Charter of the United Nations and with the consent of the Security Council, the Secretary-General has the honour to notify the General Assembly of matters relative to the maintenance of international peace and security that are being dealt with by the Council.

2. The matters relative to the maintenance of international peace and security of which the Security Council is seized are set out below. Items with which the Council has ceased to deal since the notification to the General Assembly at its seventieth session (A/70/300) have been deleted. Those deletions, made pursuant to the note by the President of the Security Council dated 26 July 2010 (S/2010/507), are recorded in document S/2016/10/Add.10.

1. The India-Pakistan question.
2. The Hyderabad question.
3. Letter dated 20 February 1958 from the representative of the Sudan addressed to the Secretary-General.
4. Letter dated 11 July 1960 from the Minister for Foreign Affairs of Cuba addressed to the President of the Security Council.
5. Letter dated 31 December 1960 from the Minister for External Affairs of Cuba addressed to the President of the Security Council.
6. The situation in Cyprus.
7. The situation in the Middle East.

* A/71/150.
** The present notification relates to the period from 1 September 2015 to 31 August 2016.

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8. The situation in the India/Pakistan subcontinent.

9. Letter dated 3 December 1971 from the Permanent Representatives of Algeria, Iraq, the Libyan Arab Republic and the People's Democratic Republic of Yemen to the United Nations addressed to the President of the Security Council.

10. Complaint by Cuba.

11. The situation concerning Western Sahara.

12. The situation between Iran and Iraq.

13. Letter dated 1 October 1985 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council.

14. Letter dated 19 April 1988 from the Permanent Representative of Tunisia to the United Nations addressed to the President of the Security Council.

15. Letter dated 2 February 1990 from the Permanent Representative of Cuba to the United Nations addressed to the President of the Security Council.

16. United Nations peacekeeping operations.

17. The situation between Iraq and Kuwait.

18. The situation in Liberia.

19. The situation in Somalia.

20. The situation in Bosnia and Herzegovina.

21. The situation in Georgia.

22. The question concerning Haiti.

23. The situation in Burundi.

24. The situation in Afghanistan.

25. The situation in Sierra Leone.

26. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

27. International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994.

28. The situation in the Great Lakes region.

29. The situation concerning the Democratic Republic of the Congo.

30. The situation in the Central African Republic.

31. Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999).

32. Children and armed conflict.
33. The situation in Guinea-Bissau.
34. Protection of civilians in armed conflict.
35. Small arms.
36. General issues relating to sanctions.
37. The situation in the Middle East, including the Palestinian question.
38. Women and peace and security.
39. Briefing by the President of the International Court of Justice.
40. Briefing by the United Nations High Commissioner for Refugees.
41. Briefing by the Chairperson-in-Office of the Organization for Security and Cooperation in Europe.
42. Meeting of the Security Council with the troop- and police-contributing countries pursuant to resolution 1353 (2001), annex II, sections A and B.
43. Threats to international peace and security caused by terrorist acts.
44. Briefings by Chairs of subsidiary bodies of the Security Council.
45. The situation in Côte d'Ivoire.
46. Security Council mission.
47. The promotion and strengthening of the rule of law in the maintenance of international peace and security.
48. Central African region.
49. Non-proliferation of weapons of mass destruction.
50. Reports of the Secretary-General on the Sudan and South Sudan.
51. Peacebuilding and sustaining peace.[1]
52. The situation concerning Iraq.
53. Threats to international peace and security.
54. Non-proliferation.
55. Peace consolidation in West Africa.
56. The situation in Myanmar.
57. Non-proliferation/Democratic People's Republic of Korea.
58. Maintenance of international peace and security.
59. Peace and security in Africa.

[1] Pursuant to the note by the President of the Security Council dated 21 June 2016 (S/2016/560), as from 22 June 2016, the earlier consideration by the Council of issues pertaining to peacebuilding and post-conflict peacebuilding under the agenda item "Post-conflict peacebuilding" was subsumed under the item entitled "Peacebuilding and sustaining peace".

60. Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security.

61. The situation in Libya.

62. The situation in Mali.

63. Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136).

64. Letter dated 13 April 2014 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/2014/264).

65. The situation in the Democratic People's Republic of Korea.

66. Identical letters dated 19 January 2016 from the Permanent Representative of Colombia to the United Nations addressed to the Secretary-General and the President of the Security Council (S/2016/53).

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Seventy-first session
Item 67 (b) of the provisional agenda*
Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, prepared pursuant to General Assembly resolutions 68/151 and 70/140.

* A/71/150.

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Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Summary

In the present report, the Special Rapporteur discusses the important role played by national specialized bodies and national plans of action in preventing and combating racism, racial discrimination, xenophobia and related intolerance. Drawing from responses to a questionnaire sent to Member States and relevant stakeholders and other information, he highlights some examples of good practices undertaken by national specialized bodies and in national plans of action to combat racism, racial discrimination, xenophobia and related intolerance.

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I. Activities of the Special Rapporteur

1. The present report is submitted pursuant to General Assembly resolutions 68/151 and 70/140.

A. Country visits

2. The Special Rapporteur expresses his gratitude to the Government of Argentina for the cooperation extended to him during his visit to the country from 16 to 23 May 2016, and to the Governments of Australia and Fiji, which have accepted his visits scheduled from 28 November to 5 December and from 7 to 12 December 2016, respectively.

3. The Special Rapporteur would like to thank the Government of Morocco for inviting him to visit the country, and hopes to honour this invitation in 2017. He also hopes to receive a positive reply to his requests to visit India, Japan, South Africa, Thailand and the United States of America before the end of his mandate.

B. Other activities

4. The activities of the Special Rapporteur between July 2015 and March 2016 are reflected in his report to the Human Rights Council at its thirty-second session (A/HRC/32/49 and Corr.1). After March 2016, the Special Rapporteur participated in the high-level thematic debate convened by the President of the General Assembly on 12 and 13 July in New York.

II. The role of national specialized bodies and national action plans in preventing and combating racism, racial discrimination, xenophobia and related intolerance

A. Introduction

5. The current mandate holder and his predecessors have noted in their various thematic and country visit reports[1] the importance and value of putting in place national plans of action and national specialized bodies for equality, which can play a fundamental role in addressing the root causes of and shaping policies aimed at combating discrimination, racism and xenophobia.

6. In the present report, the Special Rapporteur further elaborates on the important role played by national specialized bodies (or "equality bodies") and national action plans in preventing and combating racism, racial discrimination, xenophobia and related intolerance. Not only do national specialized bodies and national action plans address the root causes of discrimination in various areas, such as employment, housing, education, the justice system, law enforcement and access to different goods and services, but they also serve to promote and bring about institutional and effective change in different State and private organizations.

[1] See, in particular, the country visit reports, available from www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/CountryVisits.aspx, and A/HRC/11/36, A/HRC/17/40 and A/HRC/18/44.

7. National specialized bodies have the potential to promote policy change. The Commissioner for Human Rights of the Council of Europe has noted their potential to "enhance the reach and effectiveness of public policy making by assisting policy makers to include an equality dimension into all policies and programmes and by gathering information to underpin policy making".[2] This potential can be realized through the provision of advice to legislative and executive authorities. The legal opinions, casework recommendations and research by these bodies are, in particular, important contributions to change.

8. The Special Rapporteur also believes that national specialized bodies and national action plans can be instruments of institutional change in organizations. For instance, national specialized bodies have contributed to enhancing the performance of organizations in the public and private sectors and have supported them in promoting equality, diversity and non-discrimination. There have also been several examples of national specialized bodies advising local authorities on how to enhance equality in their daily work.

9. This potential of national specialized bodies is also realized through the provision of advice to business and trade unions. The guidance and support services, survey work and the casework recommendations of these bodies have been fundamental to helping the evolution of non-discriminatory employment practices. Furthermore, national specialized bodies have the potential to enhance the wider institutional infrastructure promoting equality and combating discrimination. The Commissioner for Human Rights of the Council of Europe has also noted their potential to "achieve a multiplier effect from the resources they hold by supporting a range of stakeholder organizations to play roles in promoting equality and combating discrimination".[2]

10. The Special Rapporteur believes that engagement and partnership with civil society organizations working on issues of non-discrimination and equality is one example of good practices of national specialized bodies that need to be highlighted.

11. National specialized bodies face a number of obstacles when providing advice to different stakeholders. Lack of resources and, in some cases, limited stakeholder interest have also affected some bodies in the discharge of their mandates.

12. The Special Rapporteur believes that it is important that each State identify the challenges faced by these bodies and provide the support necessary for the work carried out by them.

13. Similarly, attention given to national action plans to supplement or strengthen existing national legislation and policy relating specifically to combating racism and xenophobia can further strengthen the role played by national specialized bodies. The Special Rapporteur believes that a review of the goals, strategies, tools and actions pursued by such bodies in carrying out their functions can maximize the impact of their work. Given that national action plans have been the focus of earlier discussions by previous mandate holders, through the scrutiny of the Committee on the Elimination of Racial Discrimination, as well as in a comprehensive publication of the Office of the United Nations High Commissioner for Human Rights (OHCHR), *Developing National Action Plans against Racial Discrimination: A Practical Guide*,[3]

[2] Council of Europe, Opinion of the Commissioner for Human Rights on national structures for promoting equality, document CommDH(2011)2.

[3] United Nations publication, Sales No. E.13.XIV.3.

more emphasis will be given to the role of national specialized bodies in the present report.

14. For the preparation of the present report, the Special Rapporteur sent to Member States, networks of national specialized bodies and other relevant stakeholders a questionnaire on their national action plans and their specialized equality bodies, seeking information on how the two mechanisms are related and work with each other and their effectiveness in combating racism, xenophobia and related discrimination. As at 31 July 2016, replies had been received from the following Member States: Bolivia (Plurinational State of), Denmark, Greece, Kyrgyzstan, Lebanon, Mexico, Mauritania, Namibia, Qatar, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa and Turkey.[4] The Special Rapporteur wishes to thank all States that sent their replies, from which he draws some of the examples mentioned in the present report, and remains interested in receiving additional information, although it may not be incorporated into the present report.

B. Normative and legislative framework

15. The Special Rapporteur notes that the creation of national specialized bodies in national legislation is encouraged, not only at the international level, but also at the regional level, in a number of legislative instruments.

1. International level

International Convention on the Elimination of All Forms of Racial Discrimination

16. In article 14 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination, it is stated that: "Any State Party which makes a declaration ... may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies."

Durban Declaration and Programme of Action (2001)

17. The Special Rapporteur recalls that in paragraph 113 of the Durban Declaration, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance on 8 September 2001, support was reaffirmed for relevant regional bodies where they exist and their establishment was encouraged. In paragraph 90 of the Programme of Action, States were urged "as appropriate, to establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions, particularly on issues of racism, racial discrimination, xenophobia and related intolerance". Moreover, the Programme of Action goes beyond the creation of national specialized bodies, since States are urged in paragraph 91 thereof "to foster cooperation between these institutions and other national institutions", "to take steps to ensure that those individuals or groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance can participate fully in these institutions", and

[4] The Special Rapporteur regrets that he was not able to review all submissions owing to late replies and delays relating to translation from United Nations conference services.

"to support these institutions and similar bodies, inter alia through the publication and circulation of existing national laws and jurisprudence, and cooperation with institutions in other countries, so that knowledge can be gained of the manifestations, functions and mechanisms of these practices and the strategies designed to prevent, combat and eradicate them". More particularly, at the national level, it is recommended in paragraph 163 of the Programme of Action that for the purposes of effectively combating racism and racial discrimination, xenophobia and related intolerance in the civil, political, economic, social and cultural fields, the national legislative framework of all States expressly and specifically prohibit racial discrimination and provide effective judicial and other remedies or redress, including through the designation of national, independent, specialized bodies.

18. At the regional and international levels, States are urged in paragraph 188 of the Programme of Action "to support the activities of regional bodies or centres which combat racism, racial discrimination, xenophobia and related intolerance where they exist in their region", and the establishment of such bodies or centres is recommended in all regions where they do not exist. It is stated that: "These bodies or centres may undertake the following activities, amongst others: assess and follow up the situation of racism, racial discrimination, xenophobia and related intolerance, and of individuals or groups of individuals who are victims thereof or subject thereto; identify trends, issues and problems; collect, disseminate and exchange information, inter alia relevant to the outcome of the regional conferences and the World Conference, and build networks to these ends; highlight examples of good practices; organize awareness-raising campaigns; develop proposals, solutions and preventive measures, where possible and appropriate, through joint efforts by coordinating with the United Nations, regional organizations and States and national human rights institutions" (See A/CONF.189/12 and Corr.1, chap. I).

2. Regional level

European region

19. The European Commission against Racism and Intolerance, established in 1993 by the Council of Europe, recommended in its general policy recommendation No. 2, on specialized bodies to combat racism, xenophobia, anti-Semitism and intolerance at the national level, "to consider carefully the possibility of setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist".[5]

20. European Union directive 2000/43/EC, also known as the Race Equality Directive, prohibits discrimination on the grounds of race and ethnic origin. It covers issues of employment and occupation, vocational training, membership of employer and employee organizations, social protection, including social security and health care, education and access to goods and services that are available to the public, including housing. Pursuant to the directive, all member States must have or create a specialized body for the promotion of equal treatment on the grounds of race and ethnic origin. It is mentioned in paragraph 24 of the directive that: "protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with

[5] European Commission against Racism and Intolerance, document CRI(97)36.

competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims".

Americas region

21. On 5 June 2013, the Inter-American Commission on Human Rights adopted the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance. The Convention has been signed by 11 States, but has not yet been ratified by any of them. It is provided in article 13 of the Convention that the States parties undertake, in accordance with their internal legislation, to establish or designate a national institution that shall be responsible for monitoring compliance with the Convention, and shall inform the general secretariat of the Organization of American States of this institution.

3. National level

22. The Special Rapporteur notes that some of the above-mentioned international and regional instruments have acted as driving forces for the establishment of specialized bodies at the national level. For example, following the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in September 2001 in Durban, South Africa, several such bodies were created in Latin America. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala was created in 2002 (see CERD/C/GTM/14-15, para. 62); the Special Secretariat for the Promotion of Racial Equality was created in 2003 in Brazil (see CERD/C/431/Add.8, para. 273); the National Council for the Prevention of Discrimination was created the same year in Mexico;[6] and a national commission against racism was created in Honduras in 2004.[7] In 2006, a department for action against discrimination was created within the office of the Ombudsman of Paraguay in accordance with the provisions of the Durban Declaration and Programme of Action (see CERD/C/PRY/1-3).

23. Similarly, national specialized bodies have been established in transposition of European Union directive 2000/43/EC. This is the case, for instance, for the National Office against Racial Discrimination in Italy,[8] which was created by a legislative decree transposing the European Union directive.

24. Similarly, the Commission for Protection against Discrimination in Bulgaria was created in 2005 in compliance with the Protection against Discrimination Act,[9] and the National Council for Combating Discrimination was established in Romania pursuant to Government Ordinance No. 137/2000 and Government Decision No. 1194/2001 on the organization and function of the National Council.[10] It is important to point out that several States have transposed the European Union directive even though they were not member States of the European Union at the

[6] Mexico, National Council for the Prevention of Discrimination, "¿Quiénes Somos?", available in Spanish from http://www.conapred.org.mx/index.php?contenido=pagina&id=38&id_opcion=15&op=15.

[7] International Labour Organization, "Honduras, Decreto Ejecutivo núm. 002-2004", database of national labour, social security and related human rights legislation (NATLEX). Available from http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=69321&p_country=HND&p_count=259 (accessed 19 August 2016).

[8] See www.equineteurope.org/National-Office-against-Racial.

[9] See www.equineteurope.org/Commission-for-Protection-Against-36.

[10] See www.equineteurope.org/National-Council-for-Combating.

date of creation of their national specialized body. Similarly, some States that do not have a national specialized body cover the issues addressed by these bodies through their more general national human rights institutions.

C. How national specialized bodies work to prevent and combat racism, racial discrimination, xenophobia and related intolerance

1. Different types, functions and activities of national specialized bodies

25. The Special Rapporteur notes that there are two main types of national specialized bodies: tribunal-type bodies, that is, impartial institutions that hear, investigate and decide on individual cases of discrimination brought before them; and promotion-type bodies whose activities are dedicated to supporting dialogue with stakeholders, raising awareness of rights, developing a knowledge base on equality and non-discrimination and providing legal advice and assistance to individual victims of discrimination.[11]

Tribunal-type bodies

26. The Special Rapporteur observes that quite a few national specialized bodies have the power to launch investigations on their own: some can act as *amicus curiae* or launch claims of *actio popularis*. These bodies can also play a more active role in enforcing legislation independently of the complaints filed with them.[12] This is notably the case for several ombudsmens' offices, including those of Argentina, Costa Rica, Paraguay and Spain. The National Counsel for the Defence of Human Rights of El Salvador and the National Institution of Human Rights of Uruguay also have this power.

27. Similarly, several national specialized bodies can also decide on the merits of a case where there is a disagreement between two parties, with or without a previous investigation and conciliation. Some bodies can also take a case directly to a civil court to enforce application of the relevant anti-discrimination legislation. Usually, national specialized bodies can choose the kind of cases they wish to litigate.[13]

Promotion-type bodies

28. The Special Rapporteur notes that most national specialized bodies are mandated to offer conciliatory services in order to reach an agreement between the plaintiff and the respondent, institution or person, thus avoiding the judicial process. If no agreement can be reached, some of these promotion-type bodies can issue warnings, reminders, advice, or recommendations and opinions addressed to the respondent about how to stop discrimination.[14]

29. National specialized bodies can also offer legal advice and assistance to victims of discrimination by informing them of and helping them to assert their rights and by documenting discrimination. This legal advice function is usually

[11] Margit Ammer and others, "Study on equality bodies set up under directives 2000/43/EC, 2004/113/EC and 2006/54/EC: synthesis report" (Human European Consultancy and Ludwig Boltzmann Institute of Human Rights, 2010) pp. 43-44.

[12] Ibid., p. 70.

[13] Ibid., p. 70.

[14] Ibid., p. 81.

strengthened by the presence of regional offices. For instance, the Austrian Ombud for Equal Treatment offers free and confidential advice and support and is present in five regional offices that provide advisory services in Austria, in Vienna, Graz, Klagenfurt, Linz and Innsbruck.

Advocacy

30. The Special Rapporteur notes that while advocacy is part of the mandate of many national specialized bodies, it is usually more prominent with the promotion-type bodies and is carried out by raising awareness and training different stakeholders in order to prevent discrimination by employers. In fact, many national specialized bodies advocate for changing the policies, procedures and practices of employers, service providers and policymakers.[15]

31. The main target groups of the advocacy work of national specialized bodies are employers, including restaurant, bar and club owners and managers, and their professional organizations, trade unions, employers' unions, public authorities and different public administrations, as well as civil society organizations, the media, police forces, legal professionals, providers of housing, property owners, professionals in the education sector and recruitment agencies.[15]

Raising awareness

32. The Special Rapporteur is pleased to note that national specialized bodies have been active in organizing events on international days, such as International Roma Day (8 April), the International Day for the Elimination of Racial Discrimination (21 March) and the International Day of the World's Indigenous Peoples (9 August), and for the International Decade for People of African Descent (2015-2024). He also notes that a number of anti-discrimination campaigns have been initiated by national specialized bodies, such as media campaigns on issues of discrimination that included television, radio and newspaper advertisements, the publication of several documents, the launch of online platforms to combat racism and discrimination and the holding of training seminars and conferences.

33. A number of bodies have dedicated communications departments or staff members assigned solely to communication tasks, including relations with the media. These teams can create communication strategies to inform the general public or specific target groups, aimed at increasing awareness of rights, developing recognition for national equality bodies and informing people who feel they have been discriminated against about available remedies.[16]

34. One such example of a positive media campaign was conducted in 2010 by the National Institute against Discrimination, Xenophobia and Racism of Argentina, which launched a programme entitled "Afro-descendants against discrimination, xenophobia and racism". The programme comprises actions to raise the profile and increase awareness of Afro-Argentine identity and culture (see A/HRC/22/4/Add.1/Rev.1, para. 28).

[15] European Network of Equality Bodies, *Equality Bodies Combating Discrimination on the Ground of Racial or Ethnic Origin* (Brussels, 2012), p. 17.

[16] European Network of Equality Bodies, *Promoting equality: overview of positive measures used by national equality bodies* (Brussels, 2008), p. 19.

Gathering data/knowledge base

35. As the Special Rapporteur emphasized in his previous report to the General Assembly (A/70/335), the collection of ethnically disaggregated data is an essential tool in gathering evidence of occurrences of racial discrimination; evaluating the situation of groups that are discriminated against; assessing the effectiveness of the measures taken; monitoring progress made; and deciding on special measures to correct the situation. Disaggregated data are key to setting evidence-based targets and designing appropriate and effective anti-discrimination legislation, policies and programmes. Therefore, it is crucial that national specialized bodies be given the mandate and the appropriate tools to collect disaggregated statistics, together with national statistical agencies. The Special Rapporteur further recalls the importance of collecting disaggregated data as one of the indicators for monitoring progress towards the Sustainable Development Goals adopted in September 2015 by the General Assembly in its resolution 70/1.

36. The Special Rapporteur notes that in the *European handbook on equality data*,[17] national specialized bodies are required to collect quantitative and qualitative information in order to be able to perform their monitoring functions. European Union directive 2000/43/EC also requires national specialized bodies to conduct "independent surveys concerning discrimination". The United Nations human rights treaty bodies have frequently called upon States to collect data on equality and discrimination, as has the Special Rapporteur, for example, in his previous report to the General Assembly.

37. The Special Rapporteur emphasizes, in particular, that data are needed to guide and support policy development and implementation. Statistics are also needed in the different judicial processes, as it is sometimes difficult, if not impossible, to prove discrimination in the absence of empirical evidence. In labour issues, statistics are needed by government agencies and businesses that want to ensure that their employment policies and practices comply with employment and non-discrimination laws. Other stakeholders would also benefit from the existence of benchmark data, such as for the labour market, against which to compare their own results. Qualitative and quantitative data are also needed for sensitizing and awareness-raising purposes. Scientific evidence on the extent and nature of discrimination can serve as a compelling, factual baseline for national discussion on equality and discrimination. Finally, equality data are needed as an indispensable resource for researchers in order to develop and implement more effective equality and anti-discriminatory policies. The Special Rapporteur is pleased to note that several national specialized bodies have a mandate to gather equality data specifically. This is the case, for example, in Norway,[18] Germany[19] and Denmark.[20]

2. Thematic coverage by national specialized bodies

38. The Special Rapporteur is aware of the wide range of issues that national specialized bodies have to address, whether through complaints or through promotional work. Some of the issues to which they are asked to attend relate to

[17] European Commission, *European handbook on equality data* (Brussels, 2007).
[18] See www.ssb.no/en/befolkning.
[19] See www.destatis.de/EN/Homepage.html.
[20] See www.dst.dk/en.

discrimination in labour/employment, the housing and education sectors and access to goods and services. These are further discussed below.

Labour/employment (public and private sector)

39. The Special Rapporteur was informed that in the workplace, the most common issues addressed by national specialized bodies are discrimination in the recruitment process and discriminatory dismissals and harassment on the grounds of racial and ethnic origin. Other issues include working conditions, promotion and unequal pay.[21]

40. The Equality Commission for Northern Ireland, in cooperation with the Equality Authority of Ireland, organized an all-island Anti-Racist Workplace Week in order to promote cultural diversity and integrated workplaces.[16] Similarly, the Federal Anti-Discrimination Agency of Germany launched a pilot project together with private and public employers on the use of anonymous applications, with only the qualifications and competencies visible, which highlighted how discrimination can manifest itself at the recruitment stage.[22]

Housing/accommodation

41. National specialized bodies can also play an active role in preventing discrimination in the housing and accommodation sectors, especially with regard to social housing. The Equality and Human Rights Commission of the United Kingdom of Great Britain and Northern Ireland has issued non-statutory guidance for social housing providers in Scotland on how to comply with the Human Rights Act 1998 of the United Kingdom, in order to avoid discrimination on the basis of immigration status, nationality or income. The guidance also encourages social housing associations and local authorities in Scotland to take the steps necessary to prevent discriminatory treatment and policies.[23]

Education (admission and language barriers)

42. The Special Rapporteur is also pleased to note that national specialized bodies are active in preventing discrimination in the education system. In Peru, for example, the Ombudsman is the competent authority when discriminatory acts are committed by public servants within the education system, both with regard to access to education and in employment matters within the Ministry and related institutions.[24] In France, the Defender of Rights (formerly the Haute Autorité de lutte contre les discriminations et pour l'égalité) proclaimed education as one of its priorities during 2008 and launched an awareness-raising campaign addressed at youth. The campaign included a blog designed to explain the risks and processes of discrimination and the measures to fight against it. The blog was also aimed at providing an opportunity for young people to combat discrimination.[16]

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[21] European Network of Equality Bodies, *Equality Bodies Combating Discrimination on the Ground of Racial or Ethnic Origin* (Brussels, 2012), p. 21.

[22] See www.antidiskriminierungsstelle.de/EN/AboutUs/AnonymApplication/DepersonalisedApplication_node.html.

[23] See www.equalityhumanrights.com/en/advice-and-guidance/non-statutory-guidance-scottish-public-authorities.

[24] See www.defensoria.gob.pe/preguntas-frecuentes.php#a16 (in Spanish; accessed 13 June 2016).

Access to goods and services

43. National specialized bodies can play an important role in preventing discrimination in the provision of goods and services, not only in the public sector, but also by private providers. Among the issues and complaints reported, the denial of access to restaurants, clubs and hotels emerges most frequently.[21] In order to prevent discrimination regarding access to goods and services, the Anti-Discrimination Board of New South Wales, Australia, together with tourism associations, published anti-discrimination guidelines for the hotel and accommodation industry in April 2013, which inform hoteliers and restaurant and bar owners and their employees of their legal duties and responsibilities.[25]

D. Challenges to the work of national specialized bodies

44. The Special Rapporteur has found that the impact of the work of national specialized bodies can remain limited, since there are challenges either to the mandate of these bodies or to their operations. The Special Rapporteur hopes that by addressing these challenges, the work undertaken by national specialized bodies can have a more significant impact.

1. Underreporting

45. Underreporting has been identified, including by many of the national specialized bodies themselves, as a key barrier to their work. The Special Rapporteur notes that the numbers of complaints received and inquiries conducted by national specialized bodies on the grounds of racial and ethnic discrimination, which are often combined with those received and conducted on the grounds of other prohibited forms of discrimination, are low. The Special Rapporteur notes that the issue of underreporting is also manifest with regard to racist crimes and incidents owing to a perceived lack of trust in law enforcement agencies by victims and a sense of impunity. He has consistently called upon States to ensure prompt, thorough and impartial investigation into such crimes and has called for those responsible to be adequately sanctioned and for victims to be given full access to effective legal remedies (see A/HRC/26/50, A/HRC/29/47 and A/HRC/32/49 and Corr.1).

46. The Special Rapporteur firmly believes that the issue of underreporting needs to be acknowledged as an element limiting the important contribution that national specialized bodies can make to the fight against discrimination. He notes that better cooperation and development of links with civil society organizations, in particular, organizations representing minority ethnic groups and religious communities, have been identified as particularly important. In Europe, members of the European Network of Equality Bodies have been engaging with civil society organizations by organizing capacity-building events and training; targeting Bar associations and organizations working with disadvantaged groups; and creating platforms for dialogue. Civil society organizations can also offer a valuable channel of communication to minority ethnic groups and religious communities and can be a source of information for national specialized bodies, as was highlighted during the

[25] Anti-Discrimination Board of New South Wales, Australian Hotels Association (New South Wales) and Tourism Accommodation Australia, *Anti-Discrimination Guidelines for the Hotel and Accommodation Industry* (Sydney, 2013). Available from www.antidiscrimination.justice.nsw.gov.au/.

first annual colloquium on fundamental rights convened by the European Network of Equality Bodies, on the theme "Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe", held in Brussels on 1 and 2 October 2015.

2. Inadequate human and financial resources

47. The Special Rapporteur notes that several national specialized bodies have not been given the appropriate resources, either human or financial, to be able to carry out their mandates successfully. In addition, several such bodies have felt the consequences of the global economic and financial crisis, in which Governments have been cutting public resources across the board. This in turn has limited their capacities to accomplish the different tasks they are mandated to undertake. In Mexico, for example, the National Council for the Prevention of Discrimination mentioned in its report for 2012 that the lack of adequate resources impeded the achievement of several objectives, such as the identification and systematization of the public budget relating to the right to non-discrimination assigned to federal government agencies.[26]

3. Difficulties in gathering disaggregated data

48. Equality data are fundamental to assessing the comparative situation of groups at risk of discrimination, designing public policies that can contribute to promoting equality and assessing their implementation, and providing powerful tools against discrimination and exclusion. They shed light on the situation of groups that are at risk of discrimination but are invisible in general statistics or surveys.[27]

49. The Special Rapporteur notes, however, that one of the major challenges to the work of national specialized bodies are the restrictions to the gathering of such data within their mandates. The European Network against Racism has emphasized the necessity to "proactively collect and publish data on court cases and complaints concerning discrimination in employment and disaggregate data by ground of discrimination and field of complaint".[28] A report by the same organization on Afrophobia in Europe demonstrated that equality data collection is almost non-existent in European countries and that it is difficult to provide accurate figures, as information is collected only with regard to migration background and history, which leaves Afro-descendants born in Europe and who are citizens of a European country invisible in statistics concerning population, unemployment rates and educational attainment, and regarding other forms of potential discrimination.[29]

50. Similarly, in Latin American countries, the Special Rapporteur has noticed a lack of disaggregated data on the composition of national populations, socioeconomic indicators, the impact of social inclusion measures and the living conditions of indigenous peoples and persons of African descent, although some

[26] Mexico, National Council for the Prevention of Discrimination, "Informe anual de resultados del programa nacional para prevenir y eliminar la discriminación" (annual report on results of national programme to prevent and eliminate discrimination, 2012, in Spanish), p. 62.

[27] See www.enar-eu.org/Equality-data-collection-What-is.

[28] European Network against Racism, *Racism and Discrimination in Employment in Europe: shadow report 2012-2013* (Brussels, 2013), p. 5.

[29] European Network Against Racism, *Afrophobia in Europe: shadow report 2014-2015* (Brussels, 2016), p. 3.

countries have recently announced that they now take this issue into account in their censuses, especially with regard to the situation of persons of African descent.[30]

4. Lack of visibility

51. The Special Rapporteur notes that national specialized bodies generally suffer from a lack of visibility among the general public, which greatly limits their work. Constraints on increasing the visibility of these bodies most often relate to the fact that they are located in the capital city only and hence are not accessible to those living in rural and remote areas. This means that the bodies are not available to all groups of the population, as well as having limited opening hours. There is also a lack of information, awareness and knowledge on the part of the rights-holders concerned.

52. The Special Rapporteur wishes to make reference to a survey conducted in Europe in 2010 by the European Union Agency for Fundamental Rights regarding awareness among the public of public organizations providing support to victims of racism and discrimination. It was found that 80 per cent of respondents to the survey could not think of a single organization that could offer support to victims of discrimination — be it Government-based, an independent institution or authority, such as a national specialized body, or a non-governmental organization (NGO). Similarly, in the same survey, when given the name of a national specialized body (or an equivalent organization) in their country, 60 per cent of respondents indicated that they had never heard of it.[31]

53. Some national specialized bodies have taken steps towards increasing accessibility for the population. In Belgium, for example, the two linguistic communities agreed to unify their local anti-discrimination bodies and form a federal centre present in all regions of the country under an easily identifiable name, Unia.[32]

5. Inherent limitations of mandates

54. The Special Rapporteur notes that limitations may be inherent in the structures and mandated tasks of national specialized bodies. For instance, a tribunal-type body may not always deal with cases of multiple discrimination, but will rather focus on the most salient ground for discrimination in order to maximize the chances of reaching a concluding decision on the merits of the case, or because the body may not be mandated to cover all forms of alleged discrimination.

55. When these types of bodies reach a decision on the merits of a case, not all have the power to make their decisions binding on the parties involved, as some may only make recommendations. Furthermore, other national specialized bodies are competent to address public authorities on grounds of discrimination, but are not competent to address private stakeholders. Lastly, national specialized bodies in

[30] See, for example, the website of the National Institute of Statistics and Censuses of Argentina (www.indec.gov.ar/scn.asp).

[31] European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey, Data in Focus Report 3: Rights Awareness and Equality Bodies: strengthening the fundamental rights architecture in the EU* (Vienna, 2010), p. 13. Available from http://fra.europa.eu/eu-midis.

[32] See http://unia.be/en/about-unia.

many cases can neither condemn the party found guilty of discrimination to a fine nor award compensation payments to the victim.

56. The Special Rapporteur has also noticed that, where they exist, national plans of action to combat racism, racial discrimination, xenophobia and related intolerance do not necessarily create national specialized equality bodies. Similarly, when these bodies are already in existence, national action plans rarely involve them in their activities. In this regard, Member States should take into account the unique potential of national specialized bodies as instruments of implementation of the different activities described in national plans of action.

E. Examples of work undertaken by national specialized bodies and in national action plans to combat racism, racial discrimination, xenophobia and related intolerance

1. International and regional levels

57. The Anti-Racial Discrimination Section in OHCHR has developed guidelines on national human rights action plans, as well as guidelines for national plans of action for human rights education. It has provided guidance to several States on how to develop national action plans against racial discrimination, has followed up on the implementation of various such plans and has provided technical assistance to States that are currently developing, implementing or considering the development of such a plan.[33] Similarly, the Section has engaged in partnerships with national specialized bodies and with regional and international bodies working on the issues of equality, racism, racial discrimination, xenophobia and related intolerance.

58. The European Network of Equality Bodies brings together 45 organizations from 33 European countries with the task of counteracting discrimination across the range of grounds, including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. The Network aims to promote equality in Europe by supporting and enabling the work of national specialized bodies so that they can be valuable catalysts for more equal societies.[34]

59. An interesting initiative is shown in a case study from 2010, in which the European Network of Equality Bodies working group on dynamic interpretation sent real-life cases to equality bodies in order to analyse how European Union directive 2000/43/EC and national legislation are applied in practice. This resulted in a comparison of the different national legal solutions to the cases in order to achieve a number of objectives: identifying patterns in the way in which the directive has been implemented and applied in national laws; identifying potential gaps in protection or areas requiring legal clarification in the directive; and identifying potential and existing legislative gaps in national legal systems.[35] As a result of the study, the working group sent a recommendation to members of the Network relating to discrimination in the housing sector on the grounds of Roma origin.

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[33] See *Developing National Action Plans against Racial Discrimination: A Practical Guide* (United Nations publication, Sales No. E.13.XIV.3).

[34] See www.equineteurope.org/-About-us-.

[35] European Network of Equality Bodies, *Dynamic Interpretation: European Anti-Discrimination Law in Practice V* (Brussels, 2010), p. 5.

60. The Ibero-American Network of Agencies and Organizations against Discrimination is an association of like-minded agencies and bodies designed to build links and inter-agency coordination between government organizations, regional and international agencies, civil society organizations and academic institutions. The objective of the Network is to fight all forms of discrimination in the public and private sectors, at both the national and international levels, through the exchange of information and experiences, the production of knowledge and actions of prevention and promotion among its members.[36]

61. The Ibero-American Network of Agencies and Organizations against Discrimination was founded in 2007 at an Ibero-American meeting on social development, democracy and non-discrimination held by the National Council for the Prevention of Discrimination in Mexico. It is composed of 39 members from 18 countries (21 government agencies, 10 national and international non-governmental organizations, 3 academic institutions, 3 regional agencies and 2 international agencies).[36] The Network is active in all Latin American countries and in Spain and Portugal. Its unique characteristic is that its membership comprises government agencies to combat racism and racial discrimination and national specialized bodies and civil society organizations active in this area. Its secretariat changes regularly through its general assemblies.

62. There are no other regional networks of specialized bodies apart from those mentioned above, although some individual countries have national specialized bodies.

2. National level

63. The Special Rapporteur would like to bring to the attention of Member States some concrete examples of measures and activities undertaken by national specialized bodies, drawing from the responses he received to the questionnaire mentioned in paragraph 14 above, as well as other information.

64. The Plurinational State of Bolivia indicated that, pursuant to Act No. 045 of 8 October 2010 against racism and all forms of discrimination and Supreme Decree No. 0762 of 5 January 2011, a national action plan to combat racism and all forms of discrimination was adopted in February 2012. The plan contains policies, strategies and programmes covering the following areas: national planning and public investment targeting minority populations; access to housing programmes and employment for populations who have suffered racism and discrimination; equal access to the justice system; participation of populations who have suffered racism and discrimination in political and social life; health-care and education services; affirmative action in the military for native indigenous and peasant peoples; research on racism and discrimination; and a system for receiving complaints and registering and monitoring administrative and judicial proceedings in cases of racism and all forms of discrimination.

65. Furthermore, the Act against racism and all forms of discrimination and its regulatory decree provide for the creation of the National Committee against Racism and All Forms of Discrimination, which is responsible for promoting,

[36] See website of the Ibero-American Network of Agencies and Organizations against Discrimination, "Acerca de la RIOOD", available from www.redriood.org/acerca-de-la-riood/ (in Spanish, accessed 9 June 2016).

designing and implementing comprehensive policies and legislation to combat racism and all forms of discrimination. The membership of the National Committee comprises State institutions; social organizations; rural indigenous organizations; intercultural and Afro-Bolivian communities; organizations defending the rights of women, young people, children and adolescents, persons with disabilities and vulnerable segments of society; and other human rights institutions and organizations and civil society organizations, as well as the Office of the United Nations High Commissioner for Human Rights in the Plurinational State of Bolivia and the Office of the Ombudsman of the Plurinational State of Bolivia, which act as observers and provide technical support.

66. Denmark informed the Special Rapporteur that although it does not currently have an overarching national action plan, it has developed two specialized action plans, one in 2003 to promote equal treatment and diversity and combat racism, and another in 2010 to promote ethnic equal treatment. Denmark indicated that its Constitution guarantees "full enjoyment of civil and political rights" to all persons and that the Criminal Code penalizes discriminatory or threatening communications against particular identity groups, and a discriminatory motive is an aggravating circumstance. Denmark also submitted information on its national specialized bodies: the Board of Equal Treatment, a "predominantly quasi-judicial body" that receives complaints from parties alleging discrimination, makes determinations regarding those complaints and may go to court on behalf of the complainant if necessary; and the Danish Institute for Human Rights, a "promotion-type" body that promotes equal treatment through monitoring activities, recommendations and independent projects.

67. Greece informed the Special Rapporteur that in 2015 it established the National Council against Racism and Intolerance in order to develop a national action plan against racism and intolerance and coordinate the relevant actors to implement that strategy. Participants in the National Council include the National Commission for Human Rights, the Racist Violence Recording Network (with the participation of 36 NGOs), the Office of the United Nations High Commissioner for Refugees and the Ombudsman of Greece. It held its inaugural meeting on 20 April 2016, when it "started planning strategic objectives and set short and midterm goals". This example was highlighted by the Special Rapporteur in his report on his visit to Greece in 2015 (see A/HRC/32/49/Add.1).

68. Namibia informed the Special Rapporteur that the Office of the Ombudsman was charged with the development of a national human rights action plan pursuant to the Vienna Declaration and Programme of Action. Development of the action plan began in 2009, and the draft was submitted to the Cabinet on 30 September 2014. The action plan enumerates seven guiding principles for implementation: participation, accountability, transparency, non-discrimination, human dignity, empowerment and rule of law. Its focus is on seven specific human rights that required strengthening: health, education, water and sanitation, housing, land, access to justice and non-discrimination. For each area, shortcomings were identified, key intervention areas were developed and government ministries were assigned to lead each intervention.

69. Saudi Arabia informed the Special Rapporteur that Royal Decree No. M/12 of 19 August 1997 provided for accession to the International Convention on the Elimination of All Forms of Racial Discrimination and for the implementation of its

provisions in a manner consistent with the Islamic sharia. The legislation guarantees equality and criminalizes racial discrimination.

70. Serbia informed the Special Rapporteur about its several action plans, one of which is the Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination for the period 2014-2018. The Strategy for Social Inclusion of Roma in the Republic of Serbia for 2016-2025 targets discrimination against Serbia's Roma population. The national employment action plan for 2016 also addresses employment issues for the Roma population. Additionally, the action plan adopted in 2016 for chapter 23 of the acquis communautaire of the European Union, "Judiciary and fundamental rights", lays out amendments to the Criminal Code that would increase its effectiveness in fighting racism and xenophobia by, among other improvements, increasing "detection, discovery and arrest of the perpetrators of crimes involving violence caused by personal capacity towards national minorities". It also envisages "strengthening the capacity of the Commissioner for Protection of Equality", an equality official who receives and reports complaints of violations of the Law on the Prohibition of Discrimination. The Action Plan for Exercising the Rights of National Minorities, adopted in 2016, outlines amendments to the Law on the Protection of the Rights and Freedoms of National Minorities to improve access to public employment opportunities.

71. Slovakia reported on its national action plan on preventing and combating racism, xenophobia, anti-Semitism and other forms of intolerance for the period 2016-2018. The action plan is aimed at preventing prejudices, stereotyping and hate speech on the basis of national, racial, religious, ethnic or similar intolerance, as well as preventing the spread of attitudes and actions promoting racism, xenophobia and other forms of intolerance. It sets goals and deadlines for tasks to be performed by individual ministries and State institutions. The government committee on preventing and countering racism, xenophobia, anti-Semitism and other forms of intolerance, which is composed of the representatives of various State departments, NGOs and academic experts, oversees implementation of the national action plan.

72. Slovenia indicated that in the Protection against Discrimination Act of 2016, a national specialized body, the Advocate of the Principle of Equality, was established. The Advocate is tasked with "protection against discrimination based on any ground". Its functions include assisting victims of discrimination with legal cases, conducting inspections, gathering data and information, publishing reports and recommendations, conducting campaigns to raise awareness and communicating with interested European Union bodies.

73. South Africa informed the Special Rapporteur that although it does not yet have a national action plan against racism, racial discrimination, xenophobia and related intolerance, a draft was launched and released for public consultation in 2016. The South African Human Rights Commission, created under chapter 9 of the Constitution, is making an effort to expedite finalization of the draft national action plan. The national action plan would strengthen South Africa's existing policy on xenophobia by consolidating strategies, assigning roles to different bodies, establishing a rapid response team to identify cases of discrimination and specifically targeting racism, rather than discrimination generally. The national action plan would also pool resources, intensify efforts to fight racism in targeted sectors and promote education and diversity training. More generally, the national action plan would provide a framework, set priorities and develop mechanisms to

fight racism. Lastly, it would create hate crime legislation for certain crimes "based on one's identity".

74. Turkey informed the Special Rapporteur that article 10 of its Constitution prohibits discrimination and provides for "special measures" to protect particularly disadvantaged groups. Civil and criminal law also prohibit discrimination in specific sectors. The Law on Anti-Discrimination and Equality establishes an anti-discrimination and equality board to address complaints regarding discrimination. The Law applies to public and private actors and foresees 11 types of discrimination under the titles of "segregation", "ordering discrimination and implementing such orders", "multiple discrimination", "direct discrimination", "indirect discrimination", "workplace mobbing", "victimizing", "failing to make reasonable arrangements", "hate speech", "harassment" and "discrimination based on assumptions". Social and educational efforts also contribute to the fight against discrimination.

75. In Albania, the creation of the Commissioner for Protection from Discrimination by Law No. 10 221[37] has enabled victims to lodge a complaint in four different languages, including minority languages: English, Albanian, Greek and Romani.[38] Similarly, the website of the Office of the Ombudsman of the Plurinational State of Bolivia has been translated into four languages (Spanish, Guarani, Quechua and Aymara),[39] and the website of the Office of the Ombudsman of Peru has been translated into Quechua.[40]

76. In Romania, the National Council for Combating Discrimination is unique; its activities address 14 grounds for discrimination. Its criteria include employment, nationality, language, social category, the presence of a chronic non-infectious disease or HIV infection, being part of a disfavoured category and any other grounds for discrimination aimed at or with the result of impairing or nullifying the recognition, enjoyment or exercise, in conditions of equality, of human rights and fundamental freedoms or of rights granted by law in the political, economic, social, cultural or other fields of public life.[41]

77. In Mexico, the Instituto Nelson Mandela was created following the proclamation of the International Decade for People of African Descent to carry out awareness-raising campaigns and training on equality and non-discrimination for the general public and civil servants.[42] In addition, an agreement was reached between the Secretary of the Civil Service and the National Council for the Prevention of Discrimination that ensures the principle of equality and non-discrimination within the code of conduct for federal civil servants while performing their duties. Also in Mexico, the National Programme for Equality and Non-Discrimination (2014-2018) sets targets for every public institution to review, incorporate, adapt and strengthen their norms and practices so that regulatory and

[37] See website of the Commissioner for Protection from Discrimination, www.kmd.al/.
[38] See http://minorityrights.org/country/albania/.
[39] See www.defensoria.gob.bo/.
[40] See www.defensoria.gob.pe/.
[41] See www.equineteurope.org/National-Council-for-Combating.
[42] See website of the Ibero-American Network of Agencies and Organizations against Discrimination, "Prácticas y propuestas antidiscriminatorias" (in Spanish, accessed 20 June 2016).

administrative provisions that facilitate, encourage or tolerate discriminatory practices are removed.[43]

78. In Argentina, the National Institute against Discrimination, Xenophobia and Racism and the federal council for anti-discriminatory public policies held the second Youth Federal Parliament in 2015. In 2009, the National Institute had launched the Observatory of Discrimination in Football, an innovative initiative to prevent, analyse and combat discriminatory situations that may arise in football.

79. In Malta, the National Action Plan against Racism and Xenophobia[44] (a three-year plan developed in 2010) had the objective of developing anti-racist initiatives, such as advocacy actions, capacity-building, research activities and grass-roots initiatives.

80. In Ireland, the National Action Plan against Racism 2005-2008[45] was launched in January 2005 by the Prime Minister and the Minister for Justice, Equality and Law Reform. The Plan provided strategic direction to combat racism and promote a more inclusive, intercultural society in Ireland. The development of the Plan was preceded by a 12-month consultation process involving a wide range of stakeholders, including the Government, social partners and civil society. The launch of the Plan was in fulfilment of a commitment given at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Ireland was one of the first States in the world to establish a national action plan against racism and one of the few in the European Union to do so.

81. On 31 December 2014, in his New Year's speech to the French people, the President of France declared combating racism and anti-Semitism a major national cause for 2015,[46] which resulted in the creation of the 2015-2017 national action plan to combat racism and anti-Semitism.

82. Lastly, in Ukraine, an inter-agency working group to combat xenophobia and ethnic and racial intolerance, which brought together a broad range of relevant actors, was set up in 2008 under the Cabinet of Ministers to tackle these issues in an integrated manner. It adopted a plan of action to combat xenophobia and racial and ethnic discrimination in Ukrainian society for 2008-2009, and a similar plan for 2010-2012.[47]

III. Conclusions and recommendations

83. **The Special Rapporteur welcomes the efforts made at the international, regional and national levels to establish national specialized bodies and develop national action plans for the elimination of racism, racial discrimination, xenophobia and related intolerance.**

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[43] See www.conapred.org.mx/index.php?contenido=noticias&id=4835&id_opcion=108&op=214 (in Spanish, accessed 21 June 2016).

[44] Equality Research Consortium, "National Action Plan Against Racism Malta", December 2010.

[45] See www.justice.ie/en/JELR/NPARen.pdf/Files/NPARen.pdf.

[46] France, Délégation interministérielle à la lutte contre le racisme et l'antisémitisme, *Mobilizing France against racism and anti-Semitism: 2015-2017 action plan* (Paris, 2015). Available from www.gouvernement.fr.

[47] See European Commission against Racism and Intolerance, report on Ukraine (fourth monitoring cycle), document CRI(2012)6, p. 7.

84. The Special Rapporteur encourages States that have not done so to seriously consider developing a comprehensive national plan of action against racism, racial discrimination, xenophobia and related intolerance, especially in the global context of a growing rise of xenophobic sentiments in a prolonged migration crisis. In this regard, he recalls the recommendations made in his most recent report to the Human Rights Council (A/HRC/32/50) in order to combat racism and xenophobia.

85. The Special Rapporteur calls upon States, when developing national action plans against racism, racial discrimination, xenophobia and related intolerance, to establish a national specialized body as the key implementing agency. States should note the unique potential of such bodies in combating racism, xenophobia and other forms of discrimination, and should make every effort to link their national action plans and their activities with the specialized body. In this regard, he calls for more coordination between the objectives of national action plans and the reinforcement of the mandate and resources of national specialized bodies.

86. The Special Rapporteur also calls upon States, when establishing a national specialized body against racism and other forms of discrimination, to distinguish it from the general national human rights institution, but to do so in compliance with the Paris Principles of iadependence and impartiality. Whenever possible, this national specialized body should be mandated to ensure follow-up of the objectives of the national plan of action and the development of new plans.

87. In this regard, the Special Rapporteur recalls, as a good example, general policy recommendation No. 2 of the European Commission against Racism and Intolerance, on specialized bodies to combat racism, xenophobia, anti-Semitism and intolerance at the national level, especially chapter C of the appendix thereto, which states the functions and responsibilities of such bodies, in particular: to work towards the elimination of the various forms of discrimination; to monitor the content and effect of legislation with the aim of combating racism; to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields; to provide assistance to victims, including legal aid, in order to secure their rights before institutions and the courts; to hear and consider complaints and petitions concerning specific cases and to seek settlements; to issue advice on standards of anti-discriminatory practice in areas of their application; to contribute to the training of key groups; and to promote the awareness of the general public on issues of discrimination and to produce and publish pertinent information and documents. The Special Rapporteur calls upon States to take into account such provisions when creating national specialized bodies.

88. Finally, the Special Rapporteur recommends that States ensure that national specialized bodies are given the appropriate mandates and resources, both human and financial, to be able to carry out their functions to their full potential, in particular with regard to the challenges reported above.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human right to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human right to safe drinking water and sanitation, Léo Heller, submitted pursuant to Human Rights Council resolution 24/18.

* A/71/150.

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Report of the Special Rapporteur on the human right to safe drinking water and sanitation

Summary

In the present report, the Special Rapporteur discusses development cooperation in the water and sanitation sector, assessing the roles that it can and should play in the realization of the human right to water and sanitation.

Development cooperation can impact the human rights situation of a State or region in a positive or a negative way. In the present report, an exploratory work that will be complemented by a more in-depth report in 2017, the Special Rapporteur clarifies the relevant human rights obligations of bilateral and multilateral funders, including United Nations agencies. Subsequently, he assesses how development cooperation has been evolving in the water and sanitation sector. The Special Rapporteur presents a critical examination of relevant patterns and tendencies, drawing attention to the current approaches of funders and partner States in that field, with a focus on the related human rights principles and normative content. A number of key issues are addressed, with emphasis on measures that mitigate negative impact and maximize positive impact on human rights.

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I. Introduction

1. The 2030 Agenda for Sustainable Development, adopted by the General Assembly in September 2015, contains a broad set of Sustainable Development Goals that will require unprecedented global commitment and cooperation between countries (see General Assembly resolution 70/1). From the human rights perspective, the agenda is grounded in international human rights law and offers critical opportunities to further advance the realization of human rights for all people everywhere without discrimination.[1] The challenge now is to ensure that strategies and policies to implement the 2030 Agenda are effectively based in the established human rights framework.

2. The human rights to water and sanitation are explicitly referenced in the Agenda, and targets 6.1 and 6.2 are in line with some aspects of the normative content of those rights. The Goals are considered interdependent, and it is very clear that achieving Goal 6 will have a great impact on other Goals. At the same time, several Goals are fundamental for the realization of the human right to water and sanitation, such as Goal 10 on reducing inequality within and among countries and Goal 17 on strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development. Several targets of Goal 17 aim at the full implementation of official development assistance by developed countries and their reaching certain proportions of aid relative to gross national income, and address finance, technology and capacity-building and respecting each country's policy space and leadership to establish and implement policies for poverty eradication and sustainable development.

3. Given that background, the present report seeks to assess the roles that development cooperation[2] can and should play in the realization of the human right to water and sanitation. There are several reasons to affirm the relevance of development cooperation to the realization of the human right to water and sanitation. One is that it represents an important share of total funding for water and sanitation services in the global South, which is to increase pursuant to the 2030 Agenda. Another reason is that development cooperation often establishes a benchmark for adequate conduct in the water and sanitation sector, not only for funders but also governmental agencies of partner countries.[3] Such influence can significantly affect the prospects for the realization of the human right to water and sanitation.

4. The present report has three main objectives: first, to clarify the human rights obligations of bilateral and multilateral funders, including United Nations agencies,

[1] See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Human Rights and the 2030 Agenda for Sustainable Development", available from www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx.

[2] The term "development cooperation" is used throughout the present report, although some sources use different terms, sometimes with slightly different meanings. The intention here is to highlight the relevance of both components: "development" as the purpose of this kind of support to interested States and "cooperation" denoting a horizontal relationship between funders and recipient States. Conventionally, development cooperation includes actions such as grants, loans, debt forgiveness, technical and programming support and policy advice to recipient States.

[3] "Partner" State or country is used in the present report in place of "recipient" State or country, with the intention of suggesting a more horizontal relationship between the funder and the State that receives funding.

that engage in cooperation with States in the water and sanitation sector; second, to assess how development cooperation has been evolving in the water and sanitation sector; and third, to critically examine current approaches being taken in that field, with a focus on human rights.

5. The analytical framework adopted in the report is based on human rights principles and the specific normative content of the human right to water and sanitation. Accordingly, consideration is given to how the human rights principles of equality and non-discrimination, access to information, participation, accountability and sustainability are reflected in the selection, design and implementation of water and sanitation projects financed in the context of development cooperation. In addition, certain aspects of the normative content of the human right to water and sanitation, in particular affordability and accessibility, have been especially relevant as analytical lenses in that discussion.

6. The report focuses mainly on the least developed countries, considering that most of them did not achieve the Millennium Development Goals related to water and sanitation and their acute need for development cooperation to realize the human right to water and sanitation. Although the main subjects of the report are bilateral and multilateral funders, the Special Rapporteur recognizes the important role played by other non-State actors, such as civil society organizations, in development cooperation.

7. The report uses an exploratory approach. Based on the report, the Special Rapporteur plans to hold a series of dialogues with funders and partner States to better understand how their policies and approaches reflect and operationalize the human rights framework relating to access to water and sanitation services. The results of that research will be submitted to the General Assembly in 2017 as part of a more in-depth analytical report containing focused recommendations.

II. Human rights in development cooperation

A. Obligations under international human rights law

8. International human rights law defines the obligations of States with respect to taking appropriate measures, including through international assistance and cooperation, to the maximum of their available resources, towards the full realization of economic, social and cultural rights.

9. Under article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, for instance, each State Party undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including in particular the adoption of legislative measures. That obligation applies to the progressive realization of the human right to water and sanitation since that human right is recognized by the Human Rights Council and the General Assembly as deriving from the right to an adequate standard of living (article 11 of the Covenant). A similar obligation is also contained in article 4 of the Convention on the Rights of the Child.

1. Obligations of States

10. On the one hand, States that are unable to fulfil their obligations with respect to economic, social and cultural rights have the obligation to formulate relevant plans and strategies, seek international cooperation as needed and utilize the assistance provided towards the realization of economic, social and cultural rights. On the other hand, States that are in a position to support other countries in realizing those rights have the obligation to provide necessary support through international assistance and cooperation in a manner consistent with their obligations to fulfil economic, social and cultural rights extraterritorially.[4]

11. More specifically with respect to the human right to water, the Committee on Economic, Social and Cultural Rights explained that States parties are obligated to respect the enjoyment of that right in other countries, to refrain from actions that interfere with the enjoyment of the right to water in other countries and to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. In addition, the Committee indicated that States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance and necessary aid when required, in a manner that is consistent with the Covenant and other human rights standards and that is sustainable and culturally appropriate. The economically developed States have a special responsibility and interest to assist the poorer developing States in that regard. The Committee also elaborated on the responsibility of States through multilateral organizations, indicating that State parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures (see E/C.12/2002/11, paras. 33, 34 and 36).

12. Non-State actors from both funder States and partner States often play an important role in development cooperation. In that connection, it is important to recall that, even when development cooperation in the water and sanitation sector passes through non-governmental organizations, States continue to possess an obligation to ensure that all instruments for delegation, including contracts, are in line with human rights standards, contribute to the realization of the rights to water and sanitation and guide the activities of non-State service providers (see A/HRC/15/31, para. 63 (f)).

2. Obligations of multilateral organizations

13. Regarding the obligations of multilateral actors, the Committee stated that United Nations agencies and other international organizations should cooperate

[4] See, for example, E/C.12/2002/11 and Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 38; general comment No. 14, para. 45; general comment No. 17, para. 40; general comment No. 19, para. 61 (available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11). See also Committee on the Rights of the Child, general comment No. 16, para. 41(available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=5&DocTypeID=11). For a useful interpretation of international law on the issue, see the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights of the ETO Consortium, principles 33, 34 and 35.

effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level and that the international financial institutions should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects, so that the enjoyment of the right to water is promoted (see E/C.12/2002/11, para. 60). The Special Rapporteur is of the view that, since 164 States are parties to the International Covenant on Economic, Social and Cultural Rights as well as other relevant international human rights instruments, international financial institutions, regional banks and regional development organizations, all of which consist of Member States that have signed and ratified multiple human rights treaties, should respect, protect and facilitate the human right to water and sanitation through their activities. It follows that, even when non-State actors operationalize development cooperation initiatives supported by multilateral funders, those funders may also be held accountable for complying with human rights obligations. In addition, international organizations are bound by all human rights that are part of international customary law, general principles of law and the human rights-related provisions in their constitutions. The latter are particularly applicable to United Nations specialized agencies given that they are bound by the Charter of the United Nations.

B. How human rights principles apply and should be manifested in development cooperation

14. Integrating human rights law and principles into development cooperation provides a clear legal framework for the human right to water and sanitation that States have already recognized. In addition, the normative content of the human right to water and sanitation and human rights principles offer guidance on who and what to prioritize in planning and programming international cooperation, as well as on how policies, programmes and interventions should take place. It is critical to use the language of the human right to water and sanitation explicitly because, as stated by the Special Rapporteur on extreme poverty and human rights, the human rights language recognizes the dignity and agency of all individuals and is therefore intentionally empowering (see A/70/274, para. 65).

15. A human rights-based approach to development cooperation requires that the main objective should be to fulfil human rights; that policies and programmes identify rights-holders and their entitlements, as well as duty-bearers and their obligations, with the aim of strengthening the capacities of right-holders to claim their rights; and that human rights principles, notably the principles of equality and non-discrimination, accountability, access to information, participation and sustainability, be integrated into policies and programmes.

16. The principle of equality and non-discrimination, for instance, requires the adoption of targeted measures and affirmative action in order to achieve substantive equality. Funders and partners should work together and identify individuals and groups that are disadvantaged in their access to water, sanitation and hygiene and that are particularly vulnerable to exclusion and discrimination. Then they should develop policies and programmes that prioritize those individuals and groups.

17. The principle of participation requires that national stakeholders have ownership and control over development in the processes of planning, implementation, monitoring and evaluation and assessment. Development is for the

people. If their knowledge and expectations are not incorporated in the processes, development cooperation in the water and sanitation sector can never improve their access to water, sanitation and hygiene in a manner consistent with their human rights. National ownership is particularly crucial for the sustainability of development.

18. Access to information allows people to meaningfully participate in decision-making and empowers them to claim their rights and hold duty-bearers accountable.

III. Patterns and trends in development cooperation for water and sanitation

A. Overview of development cooperation in the water and sanitation sector

19. Development cooperation[5] has increased steadily since the 1990s. Between 2010 and 2014, the gross monetary value of grants, loans and technical advice disbursed to all sectors was approximately $791 billion, an average of $158 billion annually.[6] It is estimated that development cooperation in the water supply and sanitation sector increased by 12.3 per cent between 2006 and 2014, with a gross disbursement of $7.2 billion in 2014, corresponding to approximately 4 per cent of disbursements to all sectors that year.[7] Data show that between 2010 and 2014, $43.7 billion was committed to the water supply and sanitation sector. The top 10 funders, which provided nearly 80 per cent of total funding for water supply and sanitation projects in the period 2010-2014, included: the International Development Association/World Bank Group (17.4 per cent), Japan (15.5 per cent), Germany (12.2 per cent), European Union institutions (8.7 per cent), France (7.5 per cent), the United States of America (4.9 per cent), the special funds of the Asian Development Bank (3.8 per cent), the African Development Fund (3.1 per cent), the Republic of Korea (3.0 per cent) and the Netherlands (2.9 per cent).

20. Nevertheless, the overall global increase in funding to the sector masks significant annual variations in disbursed funds and funding modalities. Regarding funding commitments, for the 2010-2012 period, 41 per cent of aid commitments were grants and 59 per cent were concessional loans.[8] In addition, critical reviews of development cooperation flows indicate that the available data on those flows may be fragmented at best.[9] That could be due in part to a lack of collaboration between funders to provide consolidated, reliable, accurate and disaggregated data. Regarding disaggregation, the majority of development projects registered in the

[5] Although some of the data included in this section are presented in the original sources as "official development assistance", they are designated in the present report by the term "development cooperation", as explained in footnote 3.

[6] Organization for Economic Cooperation and Development (OECD), Creditor Reporting System, available from https://stats.oecd.org/Index.aspx?DataSetCode=CRS1 (accessed 2 August 2016).

[7] Organization for Economic Cooperation and Development (OECD), Creditor Reporting System: Water, available from http://stats.oecd.org/Index.aspx?QueryId=58195 (accessed 22 July 2016).

[8] See World Health Organization (WHO), *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water: GLAAS 2014 Report — Investing in Water and Sanitation: Increasing Access, Reducing Inequalities* (Geneva, 2014).

[9] See William Easterly and Tobias Pfutze, "Where does the money go? Best and worst practices in foreign aid", *Journal of Economic Perspectives*, vol. 22, No. 2 (Spring 2008).

relevant database of the Organization for Economic Cooperation and Development (OECD), accounting for more than half of the amount of funds dedicated to the sector, do not clearly indicate, for example, whether rural or urban areas have been targeted.[10] Considering the markedly lower levels of access to adequate water and sanitation services in rural areas compared with urban areas, that information gap indicates a need for improved reporting by Member States. Another noteworthy source of data inaccuracy is the non-inclusion of important interventions in informal settlements because those are considered to be part of so-called "slum/squatter upgrading".

21. It is also relevant to point out that significant proportions of development cooperation are channelled through non-governmental organizations and civil society, multilateral organizations, public-private partnerships and private contractors. In the water and sanitation sector, data reveal an unstable trend: in 2006, 51 per cent of funds were channelled through a public entity in developed States, while in 2011, that figure was 83 per cent.[6]

22. Overall, notwithstanding growing levels of development cooperation, it is still insufficient in quantity and questionable in terms of targeting when it comes to meeting the world's needs for water and sanitation.[11] For example, commitments of funds for basic systems, a proxy indicator for the extent to which the urban poor and rural populations are being reached, are consistently less than those for large systems. In 2013, 24 per cent of funds went to basic systems, compared with 50 per cent for large systems,[12] with a decrease in funds for those projects from 26 per cent to 21 per cent between 2010 and 2012.[8] Moreover, development cooperation still does not appear to be allocated with priority to the least developed countries.

B. Types of water and sanitation projects funded through development cooperation

23. In 2014, the OECD database on development cooperation registered some 7,500 projects in the water and sanitation sector in more than 140 countries, financed by OECD member States, OECD non-member States and multilateral funders. Some 2,700 of those projects were financed in the 48 least developed countries, totalling close to $2.6 billion, or approximately 30 per cent of total funding in the sector.[13]

24. Those levels of development cooperation are likely linked to the fact that the least developed countries did not meet the Millennium Development Goals on water and sanitation. While 49 per cent of the population of those countries have gained access to improved water sources since 1990, the level of access overall remained at

[10] See Wilbrod Ntawiha, "People in rural areas risk being left behind as aid to water and sanitation appears to provide better support to urban areas", 22 March 2016, available from http://devinit.org/news/#!/post/world-water-day-2016.

[11] See OECD, "Financing water and sanitation in developing countries: the contribution of external aid", June 2013, available from www.oecd.org/dac/stats/Brochure_water_2013.pdf.

[12] See WaterAid, "Essential element: why international aid for water, sanitation and hygiene is still a critical source of finance for many countries" (2015).

[13] See OECD, "Water-related aid data at a glance", Development Finance Statistics database, available from www.oecd.org/dac/stats/water-relatedaiddataataglance.htm (accessed 26 June 2016).

69 per cent. Regarding access to improved sanitation, only 27 per cent of the population has gained access since 1990 and the level of access overall has remained at 37 per cent.

25. Cooperation in the water and sanitation sector officially falls within the following main categories: water resources policy and management; water supply and large sanitation systems; basic drinking water supply and basic sanitation; and education and training in water supply and sanitation. The distinction between basic systems and large systems takes into consideration the number of people to be served: large systems provide water and sanitation to a city or neighbourhood while basic systems provide water and sanitation to small urban communities, including informal settlements, and rural communities.

26. In 2014, loans and grants from OECD member States and multilateral agencies for the water and sanitation sector and the water resources sector were allocated as follows: 50 per cent for large water supply and sanitation activities; 28 per cent for water resources policy/administrative management, water resources protection, waste management/disposal and river basin development; and 22 per cent for basic drinking water supply and sanitation. Only 0.1 per cent was dedicated to education and training in water supply and sanitation.[13]

27. In 2014, in the least developed countries, 41 per cent of funding was allocated to large water supply and sanitation activities, 27 per cent to water resources policy/administrative management, water resources protection, waste management/disposal and river basin development and 32 per cent to basic drinking water supply and sanitation. Only 0.2 per cent was dedicated to education and training in water supply and sanitation.[13]

28. At the close of the Millennium Development Goals period, disparities in water and sanitation services remained, including between urban and rural populations. The trends in development cooperation for the sector show that funders appear to favour large water supply and sanitation activities, which mostly benefit the wealthiest urban populations. They also suggest that much more targeted efforts are needed for the least developed countries, in particular with respect to sanitation, to accelerate progress and thereby achieve universal access by 2030 pursuant to the expectations set forth in the Sustainable Development Goals.

IV. Human right to water and sanitation in development cooperation policies

A. Situating the human right to water and sanitation in development cooperation

1. Pivotal issues

29. The Special Rapporteur sent a questionnaire on the subject of development cooperation in the water and sanitation sector to relevant stakeholders. The 10 items on the questionnaire were designed to uncover good practices and help assess existing policies and their association with human rights.[14] Nine States and nine

[14] The questionnaire and responses are available from www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/DevelopmentCooperationSubmissions.aspx.

civil society organizations and coalitions of individuals and entities submitted responses that were taken into consideration as part of the broader analysis of States and multilateral funders, which is presented in this section and other sections below.

30. States must respect, protect and fulfil the human right to water and sanitation in the development cooperation projects they finance, at both the national and regional levels. However, the human rights-based approach still has not been well incorporated by policy makers, sector experts or practitioners in development cooperation in the water and sanitation sector.

31. Development cooperation can have an impact on the human rights situation of a State or region in a positive or a negative way. Some civil society organizations have noted that seemingly well-intentioned programmes or projects to improve the water and sanitation services of a given city or region have at times had a negative impact on a subset of service users. In some cases the responsibility for the negative impact on the human right to water and sanitation as a result of development cooperation activities can rest with both the funders and the partner State, including with respect to the affordability of services after project completion, the accountability of public authorities and contracted businesses throughout those projects, stakeholder participation, access to information and the overall sustainability of services.

32. Some projects may evoke broader human rights concerns, such as the protection of the right of individuals to freedom of expression and those of human rights defenders. For example, there have been an unfortunate number of reports of the lives of civil society stakeholders being threatened when they voiced concerns for human rights in relation to multilateral development cooperation activities.[15] Within the human rights framework, partner States are required to create an enabling environment for active and informed participation and the protection of human rights defenders. It is also important to recall that a funding State is responsible in the context of its assistance to a beneficiary State when an internationally wrongful act has been carried out by the beneficiary State if the funding State provides such cooperation with knowledge of the circumstances and if the act would have been deemed wrongful if committed by the funding State.[16]

33. Another issue is that some stakeholders may consider certain human rights-based approaches to represent an unnecessary diversion of funds, demonstrations of "excesses of zeal" or a restriction on the flexibility of funding entities.[17] Such concerns could be brought on by the participation by multiple stakeholders in the design phase of a programme, which may lead to lengthier processes that require a greater number of opinions to be taken into consideration. The Special Rapporteur does not fully share the preceding points of view. In agreement with the conclusions reached in an evaluation carried out by the United Nations Inter-agency Mechanism

[15] See Human Rights Watch, "At your own risk: reprisals against critics of World Bank Group projects", 22 June 2015, available from www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects.

[16] See General Assembly resolution 56/83, annex, art. 16. According to a ruling of the International Court of Justice in the Bosnian genocide case (*Bosnia and Herzegovina v. Serbia and Montenegro*, judgment of 26 February 2007, para. 420), art. 16 reflects a customary rule.

[17] AquaFed: the International Federation of Private Water Operators, "AquaFed contribution on questions for the report on Development Cooperation", 30 January 2016, available from www.aquafed.org/Public/Files/__Uploads/files/2016-01-31%20AquaFed_RTWS_DevCoop_Heller.pdf.

on All Freshwater-related Issues, Including Sanitation (UN-Water), the Special Rapporteur is of the view that raising awareness of rights-holders by strengthening participatory processes can lead to greater ownership, more involvement in operations and maintenance and improved sustainability of sanitation and water services.[18]

2. Conditionalities in development cooperation

34. Although part of the literature on conditionalities in development cooperation identifies positive and negative outcomes,[19] there is a relevant body of research in the water and sanitation sector that highlights the negative aspects of imposing conditionalities. Various types of conditionalities, including ex ante or ex post, policy-based, output-based and tied aid, are commonly used in development cooperation projects in the water and sanitation sector. For example, a funder could condition aid for a collective water supply system on the raising of tariffs paid by users, a policy of full-cost recovery or the privatization of service provision. There is a growing call to end those practices in the interest of ensuring country ownership. For example, the intergovernmental International Conference on Freshwater declared that private sector participation should not be imposed on developing countries as a conditionality for funding, and that priority should be given to catalysing other forms of financing, building capacity and targeting the poor, especially in rural areas.[20] The Special Rapporteur received several statements in response to the above-mentioned questionnaire that reinforced such calls.

35. Civil society organizations stressed that implementing development cooperation in the water and sanitation sector does not only mean making financial arrangements, but also establishing constructive relationships that coordinate to produce regionally and culturally specific policy and programme frameworks. Those affirmations embody serious, well-founded concerns that the orientation of some projects and programmes in the sector continue to be towards profit-based priorities. Civil society organizations also called for both funding and partner States to be responsible for the adverse effects of development cooperation projects on human rights. For example, when conditionalities imposed by funders requiring full-cost recovery through tariffs have raised the cost of access to water and sanitation services and cut off recourse for affected residents to petition those measures, civil society may rightly criticize public authorities for not protecting users from the adverse impact of unaffordable services, as well as the funder for facilitating the creation of such circumstances.

3. The human right to water and sanitation in State and multilateral agency policies

36. The available general policy documents of the main funding States and multilateral funders show that in most cases they implicitly recognize some of the human rights principles, including equality and non-discrimination, access to information, participation and accountability, in their policy frameworks for development cooperation. In general, a number of human rights principles are

[18] See WHO, *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2012 Report: The Challenge of Extending and Sustaining Services* (Geneva, 2012).

[19] Svea Koch, "A typology of political conditionality beyond aid: conceptual horizons based on lessons from the European Union", *World Development*, vol. 75 (November 2015).

[20] See Summary of the International Conference on Freshwater, held in Bonn, Germany from 3 to 7 December 2001, available from www.iisd.ca/crs/water/SDH20/sdvol66num5.html.

accepted and some funding agencies use compatible indicators and similar principles. However, those organizations do not yet recognize such principles as obligations under international human rights law or necessarily observe them as such in project implementation and reporting. Some elements of the normative content of the human right to water and sanitation, such as water quality and availability, are addressed by development cooperation projects, while others, such as affordability of services and accessibility, are systematically absent from policies.

37. In that respect, the recently issued OECD Principles on Water Governance represent a relevant example of a broad political commitment on the part of developed countries. The 12 principles clearly encompass some human rights principles, such as transparency and participation (referred to as "stakeholder engagement" therein), as well as other good practices, such as promoting policy coherence across sectors. However, important normative content, such as affordability, appears as more of an aspiration than an obligation under human rights law.[21] A 2007 policy paper of the OECD Development Assistance Committee on human rights and development clearly indicated the need to integrate human rights into decision-making, establish safeguards and promote the observation of human rights principles such as non-discrimination.[22]

38. It is important to clarify that the observation of some human rights principles and normative content is not the same as, and is usually far from, the application of a human rights-based approach. To ensure an effective foundation for a human rights-based approach to development cooperation in the water and sanitation sector, States and multilateral agencies must adopt a holistic view of policy, project and programme compliance within the human rights framework.

39. A few funders have implemented projects aiming explicitly to improve the situation with respect to the human right to water and sanitation. One of the very few examples of a project with a specific human rights focus is a German Cooperation-funded project in Kenya on ensuring the right to water for the poorest. Considering the need to supply drinking water to the urban poor, the project set up a network of water kiosks to sell water at regulated prices and created water action groups to improve participation. Consequently, the Government of Kenya requested funders to align their programmes to reflect the human right to water and sanitation.[23] Another example is the creation of a manual on the right to water and sanitation, a tool to assist policymakers and practitioners in developing strategies for implementing the human right to water and sanitation, which was funded by the Swiss Agency for Development and Cooperation and the United Nations Human Settlements Programme (UN-Habitat), that includes recommendations for development cooperation.[24]

[21] See OECD, "OECD principles on water governance", available from www.oecd.org/governance/oecd-principles-on-water-governance.htm.

[22] See OECD, "Development Assistance Committee action-oriented policy paper on human rights and development", 1 June 2007.

[23] See European Commission, "Commission staff working document: tool-box — a rights-based approach, encompassing all human rights for European Union development cooperation", 30 April 2014.

[24] See Centre on Housing Rights and Evictions and others, *Manual on the Right to Water and Sanitation* (Geneva, 2007).

40. The Special Rapporteur is of the view that the framework for the human right to water and sanitation should be applied across all forms and levels of water and sanitation projects supported through development cooperation, including water resources policy and administrative management programmes at the national, regional and the watershed levels, at the level of large water and sanitation systems for cities and at the local level for basic drinking water and sanitation systems for rural areas and low-income communities in urbanized areas.

41. The Special Rapporteur has reviewed relevant policy documents from the State funders who have dedicated the greatest amount of funds to development cooperation in the water and sanitation sector. The review was not intended to be exhaustive nor was it intended to make a critical judgment, but rather provides an overview of the approaches and points of view of the funding States, based on relevant official documents. Some funding States mention the human right to water and sanitation or a human rights-based approach at the framework level in their policy documents. However, there is no evidence that funding States systematically apply the human rights approach to water and sanitation as a necessary criterion in the selection of projects to be financed. The choice of financing a specific activity seems to depend much more on the funder's global strategy and the country's demand. Even when the human right to water and sanitation is exceptionally mentioned in the initial project assessment documents, once the project is implemented, those rights are not specifically referred to in the main planning and assessment tools, such as the annual operating plans and the project monitoring documents.

42. The broad conclusion is that explicit commitments to human rights in the development cooperation policies of funders constitute a heterogeneous patchwork. There are some notable cases in which the overall approach to cooperation policy, at least as set forth in official documents, is based on the human rights framework. For example, the Ministry for Foreign Affairs of Finland published a policy document that stated that the Government's development policy programme for 2012 required that a human rights-based approach be implemented in all development policy and development cooperation practiced by Finland.[25] Similarly, a framework document of the Federal Ministry for Economic Cooperation and Development of Germany,[26] contained an affirmation of human rights as one of the guiding principles for German development policy. The Federal Ministry also stated that its human rights strategy was complemented by operational guidelines specifying how to assess human rights-related risks and impact in the appraisal phase of all development programmes commissioned by the Ministry. A pioneering document from the Federal Ministry on translating theory into practice with respect to the human right to water and sanitation indicated that its policy was based on a review of experience in Kenya in 2007 and that the experience in Kenya showed that a human rights-based approach to water and sanitation could be successfully pursued, gradually leading to sustainable benefits for all.[27] Other relevant approaches include that of

[25] Finland, Ministry for Foreign Affairs, *Guidelines: Implementing the Human Rights-Based Approach in Finland's Development Policy* (2013), p. 1.

[26] Germany, Federal Ministry for Economic Cooperation and Development, *The Human Rights-Based Approach in German Development Cooperation* (2014), p. 3.

[27] Germany, Federal Ministry for Economic Cooperation and Development and the German Technical Cooperation, *The Human Right to Water and Sanitation: Translating Theory Into Practice* (Eschborn, Germany, 2009), p. 2.

the Republic of Korea of laying the foundation for reflecting a human rights-based approach in the whole programme cycle from the design to implementation phases; that of Denmark of affirming that poverty reduction and promotion of human rights are the core of development cooperation;[28] and that of Austria of ensuring that development cooperation does not risk violating human rights and that a human rights-based approach is applied in programmes, projects and in political and policy dialogues.[29] There are other countries that recognize the human rights framework in their policies, including Canada, whose Official Development Assistance Accountability Act establishes that official development assistance must be consistent with international human rights standards;[30] and France, whose Ministry of Foreign Affairs, in a document on democratic governance and human rights, stated its commitment to concretely and holistically promoting human rights across the board in all sectors of French cooperation.[31]

43. In other States, policies specifically concerning the water and sanitation sector contain formulations that reflect the human rights framework in rather distinct ways. For example, the water supply and sanitation assistance strategy of the Japan International Cooperation Agency reflects recognition of the declaration by the General Assembly in 2010 that access to safe drinking water and basic sanitation was a basic human right.[32] The Ministry of Foreign Affairs of the Netherlands indicated that the Netherlands recognized the right to safe drinking water and sanitation as a basic human right and that such recognition granted it the ability to point out, during policy discussions with partner countries, the responsibilities of the Government and the rights of the population, in particular vulnerable groups.[33] The Swiss Agency for Development Cooperation indicated that its new water strategy also set a rights-based approach to water.[34] An official document from Belgium on development cooperation mentioned that human rights principles, including the rights to water, health and decent work and the rights of women, children and indigenous peoples, were all important components of its normative framework.[35] In a reference document on realizing the human right to water and sanitation, the Government of Sweden recalled its declaration of full support for the human right to water and sanitation and that richer States had an obligation to assist

[28] See Denmark, Ministry of Foreign Affairs, *The Government's Priorities for the Danish Development Cooperation 2016: Overview of the Development Cooperation Budget 2016-2019* (September 2015).

[29] See Austria, Federal Ministry for Europe, Integration and Foreign Affairs, *Three-Year Programme on Austrian Development Policy 2016-2018* (Vienna, 2016).

[30] See Canada, Official Development Assistance Accountability Act, *Statutes of Canada*, chap. 17 (2008).

[31] See France, Ministry of Foreign Affairs, *Democratic Governance and Human Rights* (Paris, 2010).

[32] See Japan International Cooperation Agency, "Assistance strategy on water supply and sanitation" (May 2012).

[33] See the Netherlands, Ministry of Foreign Affairs, *From Infrastructure to Sustainable Impact: Policy Review of the Dutch Contribution to Drinking Water And Sanitation (1990-2011)* (The Hague, 2012).

[34] See Switzerland, Swiss Agency for Development and Cooperation, *SDC's Human Rights Policy: Towards a Life in Dignity — Realizing Rights for Poor People* (Berne, 2006).

[35] See Belgium, Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, *Strategy Note: Environment in the Belgian Development Cooperation* (Brussels, 2014).

other States in fulfilling the right to water and sanitation.[36] Spain also has strongly integrated human rights into its development cooperation policies, aiming to adopt a rights-based approach in its cooperation policy and strongly supporting the implementation of the human right to water and sanitation.

44. Unfortunately, many funders still refrain from placing human rights at the core of their policies or from explicitly recognizing the human right to water and sanitation in their policies. In such countries, practical experience in translating the human right to water and sanitation into project implementation still seems limited.

45. A review of the development cooperation policies of major multilateral funders in the sector reveals a mixed panorama regarding the consolidation of the human right to water and sanitation similar to the policies of funding States. Some major funders, such as the Inter-American Development Bank[37] and UNICEF (see E/ICEF/2006/6), have issued specific policy documents in which the human right to water and sanitation has been recognized. For other funders, including the European Union, the general policy framework may reflect a clear concern for guaranteeing human rights through all development cooperation projects. In the European Union, a human rights-based approach is being used to ensure that efforts are strengthened to assist partner countries in implementing their international human rights obligations.[38]

46. Conversely, other major multilateral funders do not incorporate human rights into their policy frameworks, sometimes intentionally. The most remarkable such case concerns the International Bank for Reconstruction and Development and the International Development Association, which form part of the World Bank Group, as thoroughly discussed in 2015 by the Special Rapporteur on extreme poverty and human rights (A/70/274). Notwithstanding non-committal references in policy analyses and public relations statements to the importance of the human rights framework, the World Bank has controversially abstained from including human rights-related criteria in its operational policies, except with respect to the rights of indigenous peoples. Several official World Bank statements have expressed the view that human rights are matters of political concern that, in accordance with the institution's articles of agreement, cannot be considered as criteria for the disbursement of funds. The recently established multilateral development banks, including the Asian Infrastructure Investment Bank and the New Development Bank, include nearly identical terms in their articles of agreement.[39]

47. It is notable that some important multilateral funders, including the World Bank and the Asian Development Bank, view water as a socially vital economic good[40] and aspire to similar goals of creating inclusive economic growth and

[36] See Swedish International Development Cooperation Agency, "Realizing the Human Right to Water and Sanitation", SIDA Reference Paper (Stockholm, 2013).

[37] See Inter-American Development Bank, "Access to water and sanitation for all and the right to water in the American region", Policy Paper, November 2011.

[38] Council of the European Union, "EU strategic framework and action plan on human rights and democracy", 25 June 2012.

[39] See New Development Bank, Articles of Agreement, annex, art. 13(e), available from http://ndbbrics.org/agreement.html. See also Asian Infrastructure Investment Bank, Articles of Agreement, art. 31(2), available from www.aiib.org/uploadfile/2015/0814/20150814022158430.pdf.

[40] See Asian Development Bank, "Water for all: the water policy of the Asian Development Bank", June 2003.

equity[41] and reducing poverty. As indicated previously, such goals may claim to produce outcomes that contribute to improved access to water and sanitation. However, it may result in part from a lack of concrete human rights consistency that programmes and projects are oriented to hastily pushing money out of the door (see A/70/274, para. 36). A framework with solid grounding in human rights, backed by the commitment of the staff and boards of those institutions, would provide safeguards against such risks, ensuring that loans for water and sanitation projects and programmes do not produce negative outcomes for some individuals or groups, but rather increase the realization of the rights of the most disadvantaged.

48. Moreover, it has been rightly pointed out that recent uprisings have highlighted the need for development to go hand-in-hand with the defence of human rights and freedoms.[42] It is in that vein that the African Development Bank, in its strategic plan for delivering basic water supply and sanitation to rural Africa for the period 2012-2015, explicitly referred to the realization of the human right to water and sanitation as a component of an enabling environment for the improvement of governance in the subsector.[43]

B. Evolution of development cooperation in water and sanitation

1. Development cooperation from the 1990s to 2015: "Pro-poor agendas" and development goals

49. The main frameworks for development cooperation in water and sanitation have been set by various meetings and policy documents, including the report of the International Conference on Water and the Environment, held in Dublin in January 1992, and the Agenda 21 of the United Nations Conference on Environment and Development, held in Rio de Janeiro, Brazil, in June 1992.

50. The Dublin Conference report sets out principles for action at the local, national and international levels. One of the very influential principles contained therein is relatively ambiguous regarding the role of the human right to water and sanitation in development cooperation and supports the strongly criticized policies of multilateral agencies. According to the principle, on the one hand, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price; on the other hand, managing water as an economic good is an important way of achieving efficient and equitable use of water resources and of encouraging conservation and protection of those resources. The definition of water as an economic good has led to a set of cooperation programmes in developing countries with radical conditionalities that impose privatization of services and commodification of water, with little consideration for the human rights framework. In a sense, the second part of the principle, the "economic side", has triumphed over the first part, the "rights side".

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[41] See World Bank, "Shared prosperity: a new goal for a changing world", 8 May 2013, available from www.worldbank.org/en/news/feature/2013/05/08/shared-prosperity-goal-for-changing-world.

[42] See European Union, *The European Union Explained: International Cooperation and Development* (Luxembourg, 2014).

[43] See African Development Bank, "Strategic plan 2012-2015: delivering basic water supply and sanitation to rural Africa".

51. The process of incorporating the human right to water and sanitation in development cooperation has not been a straightforward, consensual or expeditious process. International events have provided opportunities for governmental bodies to make various human rights-related commitments. One clear example of this is the Accra Agenda for Action of 2008, agreed to by developed and developing countries, in which it was indicated that developing countries and donors would ensure that their respective development policies and programmes were designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability.[44] More recently, the Ministerial Declaration of the Sixth World Water Forum (2012), adopted by representatives of 145 countries, demonstrated a true international consensus on the right to water and sanitation and the commitment by Governments to accelerating access to safe and clean drinking water and sanitation in line with United Nations resolutions.[45] In the Ministerial Declaration of the Seventh World Water Forum (2015), signatories indicated their engagement to translate commitments into national policies, plans and actions and to intensify joint efforts to advance water-related cooperation on a global scale, as well as their commitments to the human right to safe drinking water and sanitation and to ensuring progressive access to water and sanitation for all.[46]

52. While those international commitments were being negotiated and settled during the 1990s and 2000s, various funders were simultaneously establishing their own policies. Regarding the policies of several multilateral agencies, a popular focus since then has been the so-called "pro-poor" or social safety nets approaches, which target the poorest groups. Those orientations have been the subject of both intense theoretical debates that focus on the various social effects of targeted or universal interventions and empirical research assessing the outcomes of various programmes. "Pro-poor" approaches have not been effective in certain sectors, owing to their inability to meet the needs of the poor;[47] this has been particularly the case in the water and sanitation sector.[48]

53. Another evolution of those policies was related to the integration of development cooperation into the Millennium Development Goals, which created the expectation that international transfers would play an important role in helping developing countries to meet the targets. It is important to note that the targets of the Millennium Development Goals for water and sanitation were not as ambitious as those in the Sustainable Development Goals, as the former sought only to halve the proportion of people without sustainable access to safe drinking water and sanitation.

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[44] See OECD, "The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action", available from: www.oecd.org/dac/effectiveness/34428351.pdf.

[45] See *Post-forum highlights of the Sixth World Water Forum: Time for Solutions, Marseille, France, 12-17 March 2012*, p. 12, available from www.worldwaterforum6.org/fileadmin/user_upload/pdf/publications_elem/Highlights_web_BD_en.pdf.

[46] See World Water Forum, Ministerial Declaration, 13 April 2015, available from www.worldwatercouncil.org/fileadmin/world_water_council/documents/press_releases/Ministerial_Declaration_7th_World_Water_Forum_1304_Final.pdf.

[47] See David Coady, Margaret Grosh and John Hoddinott, "Targeting outcomes redux", *World Bank Research Observer*, vol. 19, No. 1 (2004).

[48] See Guy Norman and Steve Pedley, "Exploring the negative space: evaluating reasons for the failure of pro-poor targeting in urban sanitation projects", *Journal of Water, Sanitation and Hygiene for Development*, vol. 1, No. 2 (June 2011).

54. It is clear that the various drivers for development cooperation in water and sanitation in recent decades have been predominantly inspired by principles other than the human rights framework and that the processes and outcomes of billions of dollars invested in developing countries, particularly in the least developed countries, have barely involved human rights-based interventions. Principles such as equality and non-discrimination, access to information, participation, accountability and sustainability have not been mainstreamed in the relevant policies. Nor has the human rights principle of progressive realization using the maximum available resources been a priority in a number of countries. Furthermore, some normative content with respect to the human right to water and sanitation has also been neglected in those processes, especially affordability and acceptability, the former having been impacted by cost-recovery policies attached to development cooperation and the latter by the common practice of technology transfer without due attention to the sociocultural preferences of the target populations. It is important to emphasize that cultural acceptability must be defined by the rights-holders, not the duty-bearers, so that levels and quality of access will not be determined on the basis of the stereotypes held by entities linked to duty-bearers.

2. Development cooperation after 2015

55. It is clear that the realization of the Sustainable Development Goals will require unprecedented cooperation between countries and the development of strong cooperation strategies and actions. The Addis Ababa Action Agenda, adopted at the Third International Conference on Financing for Development and endorsed by the General Assembly in 2015 (resolution 69/313), provides a comprehensive set of policy actions by Member States, with a package of over 100 concrete measures to finance sustainable development, transform the global economy and achieve the Sustainable Development Goals.

56. A joint initiative of the Secretary-General and the World Bank Group created the High-level Panel on Water to provide support in the implementation of the 2030 Agenda. The 10-member panel is comprised of Heads of State or Government; the Panel has two special advisers. The declared aim of the Panel is the mobilization of action to accelerate the implementation of Goal 6 and its related targets.

57. In order to effectively incorporate the human right to water and sanitation in the implementation of the 2030 Agenda, particularly with respect to development cooperation, an adequate architecture must be established to assist in the formulation, guidance, management and support of the development agenda. That architecture should ideally place the normative content of the human right to water and sanitation at the centre of the specific processes related to Goal 6 overall and targets 6.1 and 6.2 specifically. The Panel should be acutely aware of the need to base its recommendations in human rights principles and the normative content of the human right to water and sanitation, as outlined in the present report. In so doing, the Panel should be able to duly address concerns raised by civil society organizations regarding the possible propensity to predominantly favour a business-oriented approach to the sector.[69] The establishment of an entity with greater openness and a wider plurality of stakeholders and viewpoints is essential to successfully introducing

[69] See letter from the Blue Planet Project and others, available from http://blueplanetproject.net/documents/bpp-unsg-letter-0416.pdf.

the human right to water and sanitation into development cooperation and to achieving the water and sanitation-related goals of the 2030 Agenda.

V. Stakes in development cooperation for water and sanitation based on the human rights framework

58. Based on the previous sections, which have mapped out development cooperation in the water and sanitation sector and its current and potential level of integration in the human rights framework, some proposals have been put forth that suggest possible avenues for achieving a proper scenario for development cooperation. The following subsections briefly discuss a number of those proposals, which are bases for part of the recommendations in the present report and serve as a preliminary guide to the development of the forthcoming report of the Special Rapporteur to be submitted to the General Assembly in 2017.

A. Human rights-based approach

59. The existence of a human rights-based approach in the formulation of development cooperation projects and programmes appears to be more of an exception than a rule in the current policies of bilateral and multilateral funders.

60. Establishing a human rights-based approach in the initial stages of a given project is essential to ensuring that the human rights framework will be embedded in the project from its conception and throughout its implementation. The specific measures to effectively implement that approach depend on the nature of the project. It may include a human rights impact assessment or other due diligence measures that enable funders to identify and mitigate the negative impact of their activities on human rights, to provide positive support, advice and assistance to States in relation to human rights (see A/70/274, para. 84) and to refrain from supporting projects and programmes that would contravene the international human rights obligations of funders and partner States. In that context, it is noteworthy that several stakeholders, including 28 special procedures mandate holders of the Human Rights Council, have exhorted the World Bank to include human rights assessments in the environmental and social policies of their revised safeguards.[50]

B. Country ownership

61. The lack of consideration of country ownership in the process of development cooperation is a frequently raised issue. In that regard, the participation of Governments and civil society in partner countries in conceptualizing, implementing, monitoring and evaluating development policies, programmes and processes needs to be part of the processes of development cooperation.[51] It is

[50] Philip Alston and others (28 special procedures mandate holders), letter to the President of the World Bank, 12 December 2014. Available from www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf; Human Rights Watch, "The World Bank's second draft environmental and social framework", October 2015, available from http://consultations.worldbank.org/Data/hub/files/hrw_submission_wb_second_draft_environmental_and_social_framework_10_8_20151.pdf.

[51] InterAction, "Country ownership: moving from rhetoric to action" (Washington, D.C., 2011).

important to reiterate in that context that the right to active, free and meaningful participation and the right to information are key human rights principles.

62. At the same time, country ownership is intimately tied to respecting the sovereignty of the partner country, without imposing particular technological solutions and policies. It implies that the best way to achieve project effectiveness must not be decided unilaterally by funders but must be led and fully and meaningfully endorsed by partner stakeholders.[52]

63. In practice, it has been widely observed that conditionalities in loan and grant concessions are often leveraged in such a way as to deny the sovereignty and ownership of the beneficiary country. Even some organizations that are reluctant to accept certain controls over development aid recognize the unfair nature of conditionalities when funders impose their own consultants and suppliers or methods of work.[27] Furthermore, institutional reforms in the water and sanitation sector, often accompanied by privatization processes, are frequently included conditionalities that can have an impact on human rights in different ways, including the probable exclusion of the most disadvantaged. Another common type of conditionality in development cooperation in the water and sanitation sector is the implementation of full-cost recovery policies based on tariff collection. Such policies, when unaccompanied by appropriate safeguards, can raise serious concerns about lack of affordability and its adverse impact on the poorest populations.

C. Legal, regulatory and policy frameworks

64. National contexts are relevant to the progressive realization of the human right to water and sanitation. A number of local factors, including corruption, regulatory frameworks and budgetary priorities, can affect the application of human rights principles and especially the sustainability of services. Corruption, for example, tends to add to the cost of water and sanitation utilities, increasing the price of utilities connections by as much as 30 per cent.[53] A poorly performing economy can make it difficult to finance services unless they are given a very high priority in the budgetary allocations of the given State or region.

65. Water and sanitation provision can be susceptible to a strongly commercially oriented agenda, regardless of the private or public nature of the provider, given the good prospects for profitability under natural monopoly conditions. However, an unregulated, commercially oriented agenda often is not responsive to social welfare and human rights considerations more broadly. Therefore, such services require regulation that is specifically rooted in the principles and normative content of the human right to water and sanitation. Rates must be fair and affordable. Service providers must be transparent, act in good faith, refrain from rent-seeking and be efficient and effective.

66. An adequate institutional environment for water and sanitation services in all States is essential for development cooperation funding to reach those most in need and to be sustainable. It allows loans and grants to leverage national policies,

[52] See World Bank, "Comprehensive development framework: country ownership", available from http://web.worldbank.org/archive/website01013/WEB/0__CON-5.HTM.

[53] Transparency International, *Global Corruption Report 2008: Corruption in the Water Sector* (Cambridge, Cambridge University Press, 2008).

making it easier for States to meet their obligations concerning the progressive realization of human rights. The responsibility falls upon partner countries to create such an enabling environment, in which development cooperation is a fundamental part of national policies to provide water and sanitation and the observance of human rights obligations.

D. Challenges in reconciling funding with effectiveness and economic sustainability

67. The total capital cost of meeting targets 6.1 and 6.2 of the Sustainable Development Goals is estimated at $114 billion per year, excluding the cost of financial and institutional strengthening, a key prerequisite for the sustainability of services. That corresponds to an amount three times higher than current investment levels.[54]

68. In addition, regardless of the level of funding, cooperation should take into consideration the comprehensive nature of water and sanitation services to make sure that outcomes are effective and sustainable. The effectiveness of investments is impaired by inadequate policies, planning and management of water and sanitation services. For example, an ineffective programme for residential connections to a sewerage network brought on by inadequate planning may result in sanitation investments in large cities not having the expected positive impact on the environment and public health. That may be particularly relevant in dense urban areas with significant informal settlements or extensive peripheral neighbourhoods. Another restraint may arise from the application of a poor cost-recovery model based on tariffs and other revenues that effectively prevents service providers from properly operating and maintaining the utilities.

69. Funders must face those challenges head-on to create proper arrangements to ensure that funding actually reaches its destination, thereby effectively generating benefit for the poor and realizing the human right to water and sanitation.

E. Disparity between cooperation in water supply and in sanitation

70. Data on development cooperation in the water and sanitation sector reveal disparities with respect to funding for water supply and sanitation activities. For sanitation, funding in the least developed countries is concentrated in urban areas and greatly favours large systems, while access to water and sanitation in poor urban and rural areas is far worse.

71. In the period 2011-2014, for a majority of least developed countries, funding allocated for large water supply systems was four times more than that allocated for large sanitation systems. The same proportion was observed when comparing basic water supply projects and basic sanitation systems. In many countries, the demand for sewerage has led to an increase in connections without due attention to proper wastewater treatment and disposal. Even in upper-middle income countries, it is estimated that wastewater from 75 per cent of households connected to sewerage is

[54] See Idun Rognerud and others, IRC Trends Analysis, 2016-2025 (The Hague, International Water and Sanitation Centre, 2016).

discharged without treatment into rivers, bays and the sea.[55] However, that trend is not necessarily linear, since in many cities in Africa and Asia, city-wide solutions for water and sanitation seem to no longer receive priority.[56] The bias towards water supply projects to the detriment of investments in sanitation, sometimes with insufficient attention to the sanitation chain, must be assessed from the human rights perspective. It is especially important to explore how that imbalance affects the enjoyment by the most disadvantaged of their rights to affordable and accessible water and sanitation services.

F. Prioritizing funding for capacity-building

72. Owing to a lack of expertise or the use of inappropriate technology, water and sanitation infrastructure provided through development cooperation may not be well-maintained or well-operated, making it necessary to provide further funding for education and training. Capacity-building is key to ensuring the sustainability of investments and a human rights-based approach should be adopted in this respect. Doing so would involve the main stakeholders directly and indirectly concerned in the adequate provision of services and strengthening their ability to perform tasks and produce outputs, collectively define and solve problems and make informed choices.[57] Other forms of cooperation, such as public-public partnerships, which are absent from the policies of most international funders, can respond effectively to that need. In that context, it is noteworthy that a petition to the European Commission with 1.9 million signatures that was ultimately endorsed by the European Parliament called for the adoption of a human rights approach to development cooperation based on not-for-profit principles and solidarity among water operators and authorities, including capacity-building partnerships aimed at improving the quality of water services.

VI. Conclusion and recommendations

73. **The present report provides an exploratory and preliminary approach to analysing development cooperation in the water and sanitation sector between States and multilateral agencies, based on secondary data, published articles and responses to a questionnaire sent to several stakeholders. Some of the issues presented will require more thorough and in-depth research, to be performed through engagement with relevant funders and partner States, and will be addressed in a subsequent report to be submitted in 2017. That report will include, but will not be limited to, a review of experiences that illustrate the stakes involved in applying the human rights framework to development cooperation in the water and sanitation sector carried out by States, multilateral agencies and (possibly) non-governmental organizations. Given**

[55] See United Nations Educational, Scientific and Cultural Organization, *The United Nations World Water Development Report 2015: Water for Sustainable World* (Paris, 2015).

[56] For a discussion on city-wide sewerage systems, see David Hall and Emanuele Lobina, "Public policy options for financing sewerage systems", in José Esteban Castro and Léo Heller, eds., *Water and Sanitation Services: Public Policy and Management* (London, Earthscan, 2009).

[57] See Emanuele Lobina and David Hall, "ACP-EU water facility–partnerships initiative", report prepared for the European Commission, 3 August 2012, available from www.right2water.eu/sites/water/files/2012-08-W-ACPEUPUPs.pdf.

that information on those experiences will be essential in complementing and validating some of the information provided in the present report, the conclusions and recommendations herein must be considered with attention to their preliminary character.

74. In line with the above, with respect to development cooperation in the water and sanitation sector, the Special Rapporteur recommends that States and multilateral funders:

(a) Openly discuss and identify obstacles to incorporating the human rights framework in all development policies, programmes and projects and identify best practices in overcoming such obstacles;

(b) Develop measures and safeguards with the specific aim of ensuring human rights compliance throughout the project selection process;

(c) Ensure that effective mechanisms are in place to allow individuals and groups whose human rights are negatively affected by development cooperation activities to lodge complaints and to hold development agencies accountable;

(d) Make country ownership of development cooperation a priority and promote active, free and meaningful participation by relevant stakeholders in decision-making through the use of appropriate instruments;

(e) Refrain from imposing conditionalities in the provision of loans and grants that risk undermining the enjoyment of the human right to water and sanitation and compromising the partner country's ownership of the related programme or project;

(f) Design cooperation projects aimed at strengthening the legal, regulatory and policy frameworks of partner States, with a view to enhancing the sustainability of interventions;

(g) Prioritize funding that actually benefits the poorest and most disadvantaged and seek to end disparities in access to services;

(h) Correct the imbalance in funding of water supply and sanitation services, giving due priority to the sanitation sector and particular consideration to the related needs of the most disadvantaged populations, and adopt appropriate technology that takes into account the sociocultural characteristics of the target populations;

(i) Incorporate capacity-building as a priority aspect of development cooperation, ensuring the integration of human rights principles and related normative content and the involvement of the main stakeholders directly and indirectly relevant to the adequate provision of services. In particular, recognize the value of other forms of cooperation that have demonstrated their positive attributes, such as public-public partnerships.

75. Regarding the High-level Panel on Water, the Special Rapporteur recommends that:

(a) The mandate of the Panel be adjusted to ensure that its recommendations related to the achievement of Goal 6 possess a clear basis in

the principles and normative content of the human right to water and sanitation;

(b) **Participatory mechanisms be implemented that fully include relevant stakeholders in the decision-making process under the Panel's mandate.**